THE CITY OF ASHEVILLE

STAFF REPORT

City Council Meeting Date: March 9, 2021

Subject: 160D Zoning Text Amendment

Staff Resources: Todd Okolichany, Planning & Urban Design Director; Shannon Tuch, Principal Planner; Brad Branham, City Attorney; Jannice Ashley, Senior Assistant City Attorney; Aarin Miles, Assistant City Attorney

Action Requested: Adopt a zoning text amendment to align the City's Unified Development Ordinance ("UDO") with North Carolina Session Law 2019-111, commonly referred to as "160D".

Background:

- 160D refers to a new chapter in the North Carolina General Statutes (NCGS) that reorganizes the land use regulatory laws of the State and came into effect through Session Law 2019-111 "AN ACT TO CLARIFY, CONSOLIDATE, AND REORGANIZE THE LAND-USE REGULATORY LAWS OF THE STATE.", adopted July 11, 2019.
- The purpose of 160D is to clarify and reorganize the land use regulatory laws of the State and is the first major recodification and modernization of city and county development regulations since 1905.
- The new 160D also consolidates these laws into one chapter in order to provide a uniform set of statutes applicable to both cities and counties (formerly found in Chapter 160A for cities and Chapter 153 for counties).
- Per Session Law 2020-25, local governments are required to enact zoning text amendments that align with 160D by July 1, 2021.
- 160D is comprehensive; therefore, City staff are addressing these revisions in sections, expecting to complete all necessary revisions by the deadline.
- This zoning text amendment is the third in a series of amendments and seeks to align the City's UDO (Chapter 7) with 160D by removing the authority for staff to make discretionary decisions.
- This is achieved by either 1) removing the authority where it is not necessary; or, 2) adding objective criteria for certain decisions.
- **Summary of changes:** The majority of changes eliminate the language that authorizes a staff person to make exceptions or modifications to development standards.
- There are a few instances where objective criteria have been updated and/or added to provide flexibility under certain circumstances.
- These instances include:
    - Sidewalk and open space fees-in-lieu (objectively identifying under what conditions a fee may be paid in lieu of constructing the sidewalk or providing open space)
    - Setback and parking flexibility (allowing for minor reductions where commonly encountered constraints warrant)
    - Table of permitted uses (establishing criterion on how to classify a land use not included in the existing table)

Comprehensive Plan Consistency:

- This proposal best aligns with the Living Asheville Comprehensive Plan theme of *Responsible Regionalism* that seeks to "improve Regional Collaboration, Coordination and Communication" by aligning the City's development code with state statutes. (p. 288)

Council Goal(s):

- A Well-Planned & Livable Community

Committee(s):

- The Planning & Zoning Commission reviewed this proposed amendment at their February 3, 2021 (public hearing) and February 5, 2021 (vote) meetings and voted unanimously (6:0) to approve the amendment (formal recommendation attached).

Pro(s):

- Proposed changes will align the City's development standards, practices and procedures with newly enacted NCGS Chapter 160D.
- Clarifies practices and procedures for the development community and provides objective criteria where additional flexibility can be considered in the UDO.
- Reduces likelihood a legal challenge based on discretionary or subjective decisions.

Con(s):

- None.

Fiscal Impact:

- None; however, the fees and charges manual for FY 2020/21 will be amended as part of the budget process to establish a fee-in-lieu option for sidewalk and related infrastructure construction.

Suggested Motion:

- Motion to approve the proposed wording amendments to Chapter 7 Articles V, VIII, IX, XI and XII of the UDO and find that the proposed amendments are reasonable, are in the public interest, are consistent with the City's comprehensive plan and meet the development needs of the community in that the amendments will, 1) promote responsible growth based on holistic decision making; and, 2) bring City ordinances into compliance with the new North Carolina General Statute Chapter 160D, regarding land use development.

Attachment(s)

- Ordinance
- Tracked Changes
- PZC Recommendation