THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: October 13, 2020

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:

- A collaborative effort between North Carolina land use attorneys, the University of North Carolina - School of Government and North Carolina legislators resulted in Session Law 2019-111 "AN ACT TO CLARIFY, CONSOLIDATE, AND REORGANIZE THE LAND-USE REGULATORY LAWS OF THE STATE." adopted July 11, 2019. Chapter 160D of the North Carolina General Statutes is the first major recodification and modernization of city and county development regulations since 1905.
- As the law's title states, the purpose of 160D is to clarify and reorganize the land use regulatory laws of the State and to consolidate these laws into one chapter in order to provide a uniform set of statutes applicable to both cities and counties (previously land use/development regulation related laws for cities were found in Article 19 of NCGS Chapter 160A and for counties were found in Article 18 of N.C.G.S. Chapter 153).
- 160D contains a number of legislative changes which a local government ***must*** take action to adopt, but it also contains permissive legislative changes which a local government ***may*** choose to adopt or not.
- Originally, parts of the 160D became effective immediately while most of it becoming effective January 1, 2021, however, on **June 19, 2020, the General Assembly enacted legislation, S.L. 2020-25, allowing for Chapter 160D to be implemented immediately by local government if they so choose, with a required implementation date of July 1, 2021.**
- This zoning text amendment seeks to align the City of Asheville Unified Development Ordinance (Chapter 7) provisions related definitions and enforcement with the new Chapter 160D.
- Chapter 160D provisions related to enforcement can be found in Article 4 of the statute (such provisions for cities were formerly found in 160A-432).
- **The 160D changes to enforcement include:**
    - **Must** issue notice of violations (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different;
        - **May** deliver NOV to occupant or person undertaking the activity; delivery by hand, electronic delivery, or first class-mail;
        - **May** be posted onsite; administrator to certify NOV for the file)(G.S. 160D-404(a));
    - If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials;
    - **Must** have consent of the premises owner or an administrative search warrant to inspect areas not open to the public (G.S. 160D-403(e))-The City has long followed this practice;
    - For revocation of development approval, **must** follow the same process as was used for the approval (G.S. 160D-403(f));
    - **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not (G.S. 160D-404(b).

- **Chapter 160D provisions related to definitions can be found in 160D-102 and S.L. 2019-111 § 1.17. The 160D provision changes are fairly minor:**
    - **Mus**t align ordinance terminology with 160D terminology for conditional zoning and special use permits;
    - **Must** delete use of the terms conditional use permit, special exception, conditional use district zoning, and special use district zoning (G.S. 160D-102);
    - **Must** ensure that that ordinance definitions for building, dwelling, dwelling unit, bedroom, and sleeping unit are not inconsistent with definitions provided in state law and regulation (S.L. 2019-111§ 1.17); and
    - **May** align ordinance terminology with Chapter 160D terminology in 160D-102 to include administrative decisions, development approval, development, and developer.

- **Summary of changes to enforcement are as follows:**
    - Updated language of sec. 7-18-3(b)(1)-(2) to include the holder of the development approval and landowner of property involved in order to conform with 160D-404(a).
    - Updated sec. 7-18-3(b)(2) to include electronic delivery as a method of service for notice of violations as provided in 160D-404(a);
    - The City has long followed the rules of 160D-403(e) in practice prior to the implementation of 160D, no real changes needed;
    - Updated language to revocation of permits, new sec. 7-18-6(c) to include that the local government must notify the development approval holder, in writing, prior to the revocation of permits and the revocation shall follow the same development approval and review process as required for issuance of the development approval , to conform with the 160D-403(f);
    - Staff strongly recommends adoption the permission 160D addition of stop work orders provision, new sec. 7-18-6(b):
        - This provision would allow staff to issue stop work orders on local development that is in substantial violation of State or local law or in a manner that endangers life or property, where it was not previously provided for outside of Article XII of the UDO.
- **Summary of Changes to Definitions are as follows:**
    - Terminology has been updated in Article II of the UDO for 160D conformance: *'bedroom'*, *'dwelling'*, *'sleeping unit'*, *'special use permit.'*
    - The Deleted term being '*conditional use permit,' which was replaced by 'special use permit';*
    - Terminology for items that are permissive, rather than required, were updated to conform to 160D-102: *'administrative decision', 'administrative hearing', 'developer'*, *'development'*, *'development approval', 'development regulation'*, *'legislative decision'*, *'legislative hearing'*, *'quasi-judicial decision,'* and *'quasi-judicial hearing.'*
    - Staff strongly recommends the adoption of the permissive terminology update to Article II of the UDO:
        - To provide continuity with Chapter 160D; and
        - To provide clarity on the various development approval processes and types of approvals available.

Comprehensive Plan Consistency: This proposal best aligns with the *Living Asheville Comprehensive Plan* theme of a **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):

- This request was reviewed by the Planning & Zoning Commission at their meetings on September 2, 2020 (public hearing) and September 23, 2020 (vote), where it was recommended for approval, 7:0.

Pro(s):
- Proposed changes will align the city's development standards, practices and procedures with newly enacted North Carolina state law Chapter 160D.
- Modernizes outdated language.
- Creates objective standards for ministerial decisions.
- Clarifies practices and procedures for the development community.

Con(s):
- None Identified.

Fiscal Impact:
- None

Staff Recommendation:
- Staff recommends approval of the proposed zoning text amendment to update Chapter 7 because this is felt to be consistent with the *Living Asheville* comprehensive plan in that it seeks to align the city's development code with North Carolina General Statute Chapter 160D.

Suggested Motion:
- I move to approve the proposed wording amendments to Articles II, XII, and XVIII of the UDO and find that the proposed amendments are reasonable, in the public interest and consistent with the city's comprehensive plan in that they promote reasonable growth based on holistic decision making and bring City ordinances into compliance with state law Chapter 160D.

Attachment(s)
- Draft Ordinance
- Planning & Zoning Commission Minutes (Excerpt)
- Planning & Zoning Recommendation