

City of Golden Memorandum



To: City Council
From: Steve Glueck, Director of Community and Economic Development
Thru: Jason Slowinski, City Manager
Date: February 19, 2019
Re: Council Discussion Addressing Development Concerns

Purpose of Agenda Item:

This item appears on Council's agenda pursuant to Council's desire to discuss and address currently voiced concerns about development activity in the community. There are two basic elements of the discussion. The first was a specific request from some of Council for legal background and comment on the idea of imposing some sort of development moratorium during a review of certain land use regulations. The second relates to steps the City and community should take to evaluate land use regulations to assure that they are appropriately aligned with our adopted policy documents. The two topics are addressed separately below and in the attachments.

Land Development and Moratoria:

This staff memo is intended to supplement the City Attorney memo dated January 25, 2019 relating to a suggested City Council conversation regarding recent requests that Council impose a yet to be defined moratorium on certain types of development or construction. In addition to the legal guidance provided by the City Attorney memo, staff's comments are more related to the logistics and details Council may wish to consider if such an idea is further evaluated.

- 1. Defining the Purpose and Need:** The Front Range of Colorado is experiencing a greater level of anxiety over real and/or perceived change than for many years. (In fact the last boom that generated this level of anxiety may have been the dramatic population increase of the late 1970's.) Accordingly, if there is a desire in Golden to place a temporary "time out" in order to consider certain policy or municipal code provisions related to development or construction, it is incumbent on the City to define the need or purpose of such a moratorium very specifically. As noted in the Attorney memo, there must be a genuine need or emergency in order to take the potentially drastic step of halting the approval of entitlements and especially if the intention is to halt the issuance of building permits. One thing to note is that the City's policies and codes are continually under review for possible revisions. When such revisions are made, they affect future approvals and actions. Taking the step to stop processing certain requests is a major decision and should include discussion of the following questions, once the purpose of the suggested moratoria is defined:
 - Is the activity occurring at a rate or amount that would justify preventing land owners from operating under existing policy or code, until such changes are given due consideration and legislative action? (Is there sufficient urgency?)

- Are the hardships or impacts to the community, likely to result from allowing owners to rely on existing codes during a review, great enough or sufficient enough to warrant preventing land owners from operating under current policies and codes during such a review?
 - If the answer is no or maybe, then Council may consider seeking a timely review of the stated concerns and issues (such as is occurring in the R2 North Neighborhoods area) and not imposing the moratorium. A further list of possible municipal code refinements is discussed later in this memo.
 - If Council as a whole believes that a temporary “time out” is warranted, it could be further defined as suggested below.
- 2. Defining the Step Impacted by the Moratorium:** Golden like most cities processes a very large number of land use and building permit requests, almost all of which generate no comment or controversy. In this regard, it is important to link the well-defined specific public purpose of the “time-out” to the correctly affected actions. In addition, the requirement for good faith action on the part of the City could affect the determination of what step to utilize for the “time-out”. The recent example with Short Term Rentals may be instructive.

In the course of setting up city-wide requirements for short term rentals, Council determined that continuing to process the narrow application opportunity available in the R3 zone could result in a confusing mix of short term rentals under older and the newer licensing and zoning requirements. For this reason, Council imposed a short hiatus on accepting and processing new requests for the Special Use Permit short term rental option in R3. The result was that a few owners in the R3 zone had to wait a few months to apply for their short term rental under the new rules. Existing approved special use permits were not affected. Ironically, the larger number of short term rentals operating “illegally” in other zone districts were not specifically affected either.

Similarly, unless the City intends to rescind current official approvals of Special Use Permits for more than 75% residential in a commercial or CMU zone, or approved residential or mixed use site development plans, a moratorium on building permit issuance for approved projects would not be proper. Rather if there is a legitimate public purpose reason to review relevant code provisions related to zoning, special use permits, or site plans, the appropriate step for a time out would be the acceptance and processing of zoning related entitlements thru Planning Commission and as appropriate City Council. As cautioned by the City Attorney, the idea of rescinding currently valid approvals would be an entirely different (and rather drastic) policy issue with other legal considerations (the non-discriminatory requirement).

Additionally, if the legitimate public purpose reason for a time out also affects actions that do not require Planning Commission or City Council zoning related entitlements, a different step in the process would be necessary. If Council were to determine that the construction of new single household or duplex structures under existing codes posed an extreme enough need or emergency to warrant preventing such construction, that prevention would occur at the step of applying for a building permit.

3. Unintended Consequences: As with any policy or code change considered or implemented by City Council, there are always consequences that may not have been fully identified or considered up front. Some of the further reasons to be very careful with any consideration of a moratorium include the following questions:

- What about building additions and/or accessory dwelling units? Are they to be affected?
- Staff would assume that tenant finish and remodel permits for existing buildings would not be affected.
- Most or all commercial and industrial projects do not seem to be part of the stated concern?
- What about hardship cases such as if a home or duplex burns down or is partially or completely destroyed?

All of these considerations would be important if Council chooses to move in this direction.

Potential Improvements to Process or Standards: In the past few weeks, some of City Council have identified a number of issues and some potential code changes that may address development concerns they have heard in the community. A summary of these issues (some with potential changes to be evaluated) is attached. Staff recommends that these issues be further evaluated regardless of whether Council continues to discuss a temporary “time out” on certain development or construction activities. The attached summary is preliminary and would benefit from further Council discussion.

Alternatives: City Council certainly has alternatives that could be pursued regarding development activities. In determining the course of action, Council may consider the following:

- The discussion of code changes to the R2 zone district related to the maximum massing of infill duplex structures should be continued in a timely manner with a recommendation to Council following the planned March 14th neighborhood meeting and Planning Commission’s subsequent review.
- Planning Commission on February 20th will continue discussion about accelerating the review of measures to align development codes with policy documents. This review should be encouraged to continue in a timely manner.
- Review of the items included in the attached list of process and standard issues assembled by City Councilors should be pursued as quickly as feasible, to determine which are to be evaluated. Some of the items would take more time to evaluate than others, but they need not be considered all together.
- If a majority of Council feel that a time out on the processing of certain applications is necessary, staff would recommend that in order to meet the tests included in the City Attorney memo, such a time out should be limited to no more than the following (and perhaps less):

- Issuance of building permits for new duplex construction in the R2 and R3 zone districts, until such time as the code changes currently under consideration are adopted, or a date certain (whichever is sooner).
- Acceptance and processing of requests for Special Use Permit for more than 75% residential use in a C1, C2, or CMU zone district.
- Acceptance and processing of requests for site plan approval for multi-family residential projects.
- The duration and exact wording of such a moratorium ordinance would be carefully crafted to assure clear intent and purpose.

Summary: These are just a few of the items to consider to most appropriately focus our efforts to continually update and improve city codes and to meet the legal requirements listed in the City Attorney memo, and make the most appropriate policy decision for the community. Staff and the City Attorney will be able to further answer questions and guide in implementing Council's policy direction.

Attachments: City Attorney memo
Preliminary list of additional code areas for evaluation