



City of
Golden

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Council Memorandum

To: The Honorable Mayor and City Council
From: Steve Glueck, Director of Community and Economic Development
Through: Jason T Slowinski, City Manager
Date: March 12, 2019
Re: Temporary Moratorium and Preliminary Outline of Municipal Code Review Related to Land Use Regulation

Purpose of Memo: This memo is presented to Council as additional background for your March 21, 2019 public hearing on Ordinance 2104 pertaining to a temporary moratorium on accepting and processing of applications for certain residential land uses, as well as initial follow-up to the study session discussion of February 28, 2019 pertaining to the regulation of certain land use development activities.

Background on Ordinance 2104: Ordinance 2104 was presented on first reading on March 7, 2019. City Council had directed its appearance on the agenda following many conversations about the benefits of reviewing and evaluating changes to certain land use and development codes. A group of residents had appeared in public comment on February 28th asking Council to both direct a timely, effective review of codes related especially to infill and multi-family development, but also to enact a short moratorium or time out on targeted development activities, in order to assure that upcoming development proposals would be in conformance with any near term code changes and refinements.

Also on February 28, 2019, Council met in study session and reviewed legal and policy issues related to the request for a moratorium. The outcome of the discussion included a number of points, not adopted as official findings, but generally agreed upon as sufficient to warrant formal discussion. A summary of some of these points is as follows:

- The zoning for much of the older neighborhoods in Golden dates primarily from 1960, and while it allowed the same uses, density, and mass and bulk of buildings as today, most construction was of a much smaller scale.
- Recent trends in Colorado and increasingly in Golden result in much larger square foot dwellings usually with higher ceiling height and overall neighborhood impact.
- As a result of the fairly significant change in construction type and scale, there is a strongly stated desire by a group of residents that the City review development restrictions, especially for infill and multi-family residential construction.

- Although it is not feasible to predict exactly how much additional construction may be undertaken in the next few months, the concern that it could be a significant amount, and that a short moratorium is needed, may be warranted.
- The work that Planning Commission and residents in the North Neighborhoods have been doing regarding potential code refinements for duplex units may allow that aspect of the requested code evaluation to proceed more quickly than the near term review of multi-family project site plans.

Based upon Council's February 28, 2019 discussion, Ordinance 2104 was finalized and was heard on first reading on March 7th, setting a public hearing and possible action on March 21, 2019. If enacted, Ordinance 2104 would enact a temporary 120 day moratorium on the following three activities:

- 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.

Ordinance 2104 also provides a process for a property owner to request an exception based upon a specific hardship, and also anticipates that the restrictions may be removed in part or in total prior to the end of the 120 days, or may also be extended in part or in total if warranted.

Background on Specific Code Areas under Review: In conjunction with the actions that City Council may take regarding a temporary moratorium on certain residential development activities, a series of municipal code sections and areas of focus are already being evaluated. The following sections are intended to be a preliminary listing of the near term and longer term efforts staff recommends to address Council's specific direction. The actual scope and schedule of any medium and/or longer term efforts will certainly be refined in coming months, as more is known.

Issues for Immediate Planning Commission Consideration.

1. Infill redevelopment in older neighborhoods tends to include larger mass structures, especially when single homes are replaced with duplex structures in R-2 and R-3 neighborhoods, but may also occur with new single household homes. Recently, a North Neighborhoods group, staff, and Planning Commission have identified potential code amendments to address mass and bulk issues. In January and February 2019, potential code changes were the subject of an opinion survey on Guiding Golden. There was a neighborhood meeting on March 14th and Planning Commission discussion on March 20th. Based upon more recent discussion, Council may wish to implement any recommended

changes as across the board change for two unit buildings in R-2 and R-3. These same bulk and mass limitations could be used to address issue of larger scale single family homes in infill situations, with additional review prior to any determination of need or decision. ***Planning Commission is asked to make specific code recommendations to Council in coming weeks.***

2. There is a question whether the residential component of a site plan in CMU or commercial zones should more closely match residential design standards (setbacks, height, open space, etcetera). This situation may occur when Planning Commission approves a 100% residential Special Use Permit or when a developer chooses to create a “horizontal” mixed use project, with the residential uses in completely separate buildings from the commercial uses.
 - One idea would be to treat a fully residential building (that either applies for a 100% residential SUP or that is part a horizontal mixed use project outside of downtown or CMU) more like R-3 for height or open space since these commercial areas are often more “suburban”.
 - Another option would be to apply the new CMU SUP criteria to the C-1 and C-2 mixed use districts, which are the standard commercial districts found throughout town:
 - i. “For residential multifamily use comprising more than 75 percent building square footage, the following standards apply:
 - ii. The amount of open space required shall be equal to the standards for multiple household found in [chapter 18.40](#) of the Municipal Code, with the additional requirement that a minimum of 50 percent of this required open space be located at ground level.
 - iii. Principal structures shall be required to have minimum side setbacks of ten feet, and minimum rear setbacks of ten feet.
 - iv. The proposed architectural design shall be compatible with the surrounding neighborhood character. Consideration for approval shall include a written narrative describing the neighborhood compatibility of the proposed architecture. Accompanying visual examples shall demonstrate inspiration from architectural elements found in the area that illustrate the basis for the design approach. Elements such as use of materials, rooflines, cornice lines, color palettes, and window and door treatments may be used, and ideally found within a two-block radius.”

Planning Commission is asked to weigh in on this design issue, which they too have raised during the course of the potential moratorium, and to make specific code recommendations.

3. Planning Commission has begun a review of individual neighborhood plans, as well as a recently compiled implementation report of all neighborhood plans. This review may also yield near term recommendations for either zoning standards or Chapter 18.40 site development plan regulations.

Immediate Process/Administrative Issues

1. When an infill project includes two or more duplexes it can begin to feel and impact like a multi-family project, but a single duplex on a single lot or parcel does not currently trigger a Chapter 18.40 Site Plan review. The current municipal code section 18.40.020(1)(d) includes a requirement that multiple duplexes on a single parcel or lot are subject to 18.40 site plan review. Council may wish to expand this requirement in situations of adjacent platted lots for infill situations.
2. Even though a townhome style project achieved by a lot consolidation in R-2 or R-3 already does require site plan review, Council has heard concerns that the scale of currently allowed R-2 townhome development may tend to overpower nearby structures more than two duplex buildings might (especially after the potential new codes). Council could direct that a code requirement that lots not be combined in R-2 or R-3 to construct more than two unit buildings be investigated. Staff has concerns about some unintended consequences, but plans to investigate.
3. There is concern that public input and dialogue earlier in site plan cases, similar to rezonings, would benefit all parties.
 - Currently, site plan review cases are not required to hold an early neighborhood meeting. As a result, the 18.40 site plan review hearing is the earliest opportunity for neighbors to verbally offer their views directly to the City or an applicant on a project.
 - This hearing often occurs late in the approval process after the developer has dedicated significant time and resources.
 - Further, if neighbor concerns are primarily about use, height, bulk, or density, these issues are difficult for Planning Commission to address through the site plan regulations in 18.40.
 - A pre-application meeting with neighbors could give them an opportunity to learn more about the proposed development, offer their suggestions, and let the developer know about their concerns.
 - In order to avoid un-necessary neighborhood meetings for minor site plan cases, a requirement similar to Chapter 18.12 variances where staff has the authority to require a pre-submittal neighborhood meeting could be instituted.

Longer Term/ Larger Issue:

There appear to be two fairly major concerns that would not be easy to address in any immediate period:

1. There is a concern that the zoning code (most of Title 18), as it has evolved, is very difficult to use for almost everyone, from the community to applicants, to Planning Commission and Council. There is no easy fix to this concern, but it is legitimate and could be tackled with a major restructuring and rewrite.

2. There is also a concern that the design requirements of Chapter 18.40 (for Planning Commission site plan review) as well as potentially, the use, and bulk/height standards in the code should be comprehensively evaluated to see if there should be changes to better align with Golden Vision, the City Comprehensive Plan, and neighborhood plans. This is a huge task and would tend to include community and expert participation. It may very well take much longer to reach an outcome.

Given the scope of either of these two tasks, staff would not recommend doing one without the other.

Public Outreach/ Decision Making Process: The level of outreach and the decision making process for the above topics will vary based on the nature and complexity/ impact of the specific issue. By definition, the Planning Commission topics and the potential larger code restructuring will have a much more defined outreach and community input process. Any items listed as Immediate Process/Administrative Issues can simply be drafted by staff and legal counsel and presented at a convenient time.

Fiscal Impact: As with most regulatory actions of the City, it is difficult to predict whether or not the code changes referenced above might have an effect on the City's fiscal resources.

Community Impact: Even though the outcomes of the various community processes discussed herein cannot be predicted, the fact that an engaged community group and Planning Commission are collaborating on the major design and land use process issues will assure a positive community impact and better alignment with Golden Vision.

Sustainability Impact: The sustainability elements of development activities are addressed in the existing code and have recently been updated. These code provisions are regularly reviewed.

Recommendations: Staff recommends that Council conduct the March 21, 2019 public hearing on Ordinance 2104, and take appropriate action.

Regardless of the outcome of Ordinance 2104, staff plans to continue with the above development code evaluations. Staff requests that Council continue to provide specific questions or issues for near term resolution, and begin to think about the longer term outcomes and processes that staff will be fleshing out in the coming weeks and months.

Attachment: Ordinance 2104

1ORDINANCE NO. 2104

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO, PROVIDING FOR A 120 DAY MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR THE ISSUANCE OF BUILDING PERMITS FOR NEW TWO DWELLING UNIT STRUCTURES IN THE R2 AND R3 ZONE DISTRICTS AS WELL AS ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR SPECIAL USE PERMITS TO ALLOW MORE THAN 75% OF A BUILDING IN C1, C2, M2, AND CMU ZONE DISTRICTS TO BE USED FOR RESIDENTIAL PURPOSES, AND ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR SITE DEVELOPMENT PLAN APPROVAL FOR MULTIPLE HOUSEHOLD DWELLING BUILDINGS UNDER GMC CHAPTER 18.40

WHEREAS, in 1960, the City of Golden enacted Ordinance 454 zoning much of the developed core of the community a combination of various zone districts, including R2 and R3, thereby allowing a mix of single household and low and moderate density residential uses; and

WHEREAS, recent increased development activities in the state in general, and specifically in Golden have resulted in the construction of structures of such mass and scale with densities that may be detrimental to the goals of maintaining the neighborhood character sought to be achieved as articulated in Golden Vision 2030 and the Comprehensive and Neighborhood Plans; and

WHEREAS, a group of concerned residents has requested, and Planning Commission and City staff are in the process of reviewing potential amendments to the Golden Municipal Code that seek to address the bulk, mass, scale, and design concerns raised by the community; and

WHEREAS, the City's Planning Commission continues to meet with concerned residents and has meetings scheduled in March 2019 to refine at least one potential phase of code changes; and

WHEREAS, in 2017, the City of Golden enacted Ordinance 2049, establishing the potential for a property owner to request a Special Use Permit to construct a building containing more than 75% residential square footage in a commercial zone district; and

WHEREAS, City Council has been made aware of concerns that the current standards for such a Special Use Permit may result in an over intense use of land in portions of the community, and has suggested code changes to address this situation; and

WHEREAS, City Council anticipates it will consider and act upon ordinances related to such potential code changes within the next 120 days; and

WHEREAS, in the absence of a moratorium, the submission of applications for the uses listed herein in anticipation of enactment of the code changes under review may well defeat the purpose of the proposed changes; and

WHEREAS, the imposition of a 120-day moratorium on the acceptance and processing of applications for, and the issuance of, any building permit for new two dwelling unit structures in the R2 and R3 zone districts, and the acceptance and processing of applications for a Special Use Permit to allow more than 75% of a building in C1, C2, M2, and CMU zone districts to be used for residential purposes,

and the acceptance and processing of applications for site development plan approval for multiple household dwelling buildings, will preserve the status quo, and allow City Council to investigate, consider, and adopt amendments, if advisable, to the Golden Municipal Code pertaining to zoning regulations for the affected uses; and

WHEREAS, the duration of the moratorium imposed by this ordinance is reasonable in length and is no longer than is required for the City to properly develop, adopt and implement an initial phase of amendments to the Golden Municipal Code pertaining to regulations for the affected uses; and

WHEREAS, owners and developers of real property affected by this ordinance desiring to construct new structures will not be unfairly prejudiced by the imposition of the short, temporary moratorium proposed by this ordinance.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN COLORADO:

Section 1. A moratorium is imposed upon the acceptance and processing of applications for, and the issuance of, any building permits for new two dwelling unit structures in the R2 and R3 zone districts, and the acceptance and processing of applications for a Special Use Permit to allow residential uses for more than 75% of a building in C1, C2, M2, and CMU zone districts, and the acceptance and processing of applications for site development plan approval for multiple household dwelling buildings.

Section 2. The moratorium imposed by this ordinance shall commence as of the effective date of this ordinance and shall expire 120 days thereafter, unless sooner repealed.

Section 3. Any residential allocations granted pursuant to Chapter 18.70 of the Golden Municipal Code in the period from January 1, 2019 up to and through the effective date of this ordinance, shall automatically be extended into the allocation period commencing upon June 1, 2019 and shall be subject to all use and surrender requirements and dates for that allocation period as detailed in Chapter 18.70.

Section 4. The City Council shall have the power to grant a special exception to the moratorium established in Section 1 of this ordinance, and to order the acceptance and processing of applications, and the issuance of a building permit, that would otherwise be prohibited by this moratorium, if the following conditions are met, as determined in the sole satisfaction and discretion of City Council:

a) A written application for a special exception must be submitted to the City Clerk indicating the exact nature of the project proposed and/or building permit, sought to be obtained and stating with particularity the circumstances of the undue, substantial hardship that the applicant will suffer if the special exception is not granted;

b) Within thirty (30) days the City Council shall hold a public hearing on the application for special exception. Notice shall be given at least 7 days in advance of the public hearing. The owner of the property, or agent, shall be notified by mail. Notice of such hearing shall be posted on the property and shall be published in a newspaper with general circulation within the City of Golden at least seven (7) days prior to the public hearing.

c) City Council may grant the special exception if it finds all of the following:

(i) The issuance of the building permit, or processing of the site plan or Special Use Permit, is necessary to prevent undue, substantial hardship for the applicant; and

(ii) The issuance of the building permit, or processing of the site plan or Special Use Permit, will not affect the public interest or the purpose and reasons for this moratorium; and

(iii) The issuance of the building permit, or processing of the site plan or Special Use Permit, will be in accordance with all of the ordinances and regulations of the City of Golden as if the moratorium were not in effect.

Section 5. The provisions of this ordinance and the moratorium imposed hereby shall not affect or otherwise prohibit the processing of applications for uses and proposals outside of the specific scope defined herein.

Section 6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 7. The repeal or modification of any provision of the Golden Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 8. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Introduced, read, passed and ordered published this 7th day of March, 2019.

Passed and adopted upon second reading and ordered published this ____ day of _____, 2019.

Marjorie N. Sloan
Mayor

ATTEST:

Monica S. Mendoza, CMC
City Clerk

APPROVED AS TO FORM:

David S. Williamson
City Attorney

I, Monica S. Mendoza, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain proposed ordinance introduced and read before the City Council of the City of Golden at a regular meeting thereof held on the 7th day of March, 2019, and ordered by said City Council to be published as the law provides, and that a public hearing is declared for the 21st day of March, 2019, at 6:30 p.m. in the Council Chambers of City Hall, 911 10th Street, Golden, Colorado.

(SEAL)

ATTEST:

MONICA S. MENDOZA

Monica S. Mendoza, City Clerk of the City of Golden, Colorado