



MEMO FROM COUNCIL OFFICE:

To: Members of the Common Council

From: Stephen Lucas, Council Administrator/Attorney

Date: September 29, 2023

Re: Ordinance 23-27 - To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Amendments Set Forth In BMC 20.03

Synopsis

This petition contains amendments in Chapter 3 related to first-floor, nonresidential use space.

Relevant Materials

- Ordinance 23-27
- Certification form from Plan Commission
- Attachment A & staff memo, showing proposed changes to Unified Development Ordinance

Background

At its August 14, 2023 and September 11, 2023 meetings, the Plan Commission considered amending the text of the Unified Development Ordinance (UDO) to change requirements for ground-floor, nonresidential uses in the downtown character overlay district. Plan Commission Case ZO-29-23 was given a recommendation of denial by a vote of 6-3-0 at the September meeting. The September Plan Commission meeting can be viewed online here: <https://youtu.be/BZwQiLHw6II?feature=shared&t=8820>. The August Plan Commission meeting can be viewed online here: <https://youtu.be/9ikhDDJ2z0c?feature=shared&t=10540>.

The proposal was prompted by interest from Plan Commission members wanting to consider revisions to additional use standards that apply in certain downtown areas. Neither the Plan Commission nor planning staff recommend adoption of this ordinance.

Options for introduction of ordinance

The Council may wish to introduce and take up consideration of Ordinance 23-27 as it generally handles items of legislation. Alternatively, given that the Plan Commission initiated the proposal only to give it a negative recommendation, the Council may wish to simply not introduce the ordinance. If the Council does not introduce or take action on the ordinance within 90 days of the Plan Commission's certification, the ordinance would be considered defeated. If the Council would rather not spend time discussing this matter, the Council has the option to not introduce the ordinance for first reading on October 4th.



Summary

The proposed text amendment to the city's UDO would revise the additional use standards applicable in the downtown character overlay district codified at [BMC 20.03.010](#)(e).

Currently, the UDO requires that a minimum of 50% of the total ground floor area of buildings in certain downtown blocks be used for nonresidential primary uses. The proposed change would reduce this percentage to 30% if either or both of the affordable housing and sustainable development incentives detailed in [BMC 20.04.110](#) are used. The revised standard would require a minimum of 1,500 square feet of ground floor area to be used for nonresidential use.

A map of the affected area from the UDO, labeled Figure 48, is included in the packet.

General Information about UDO Updates:

General information about the UDO, including the complete text of the current UDO, can be found here: <https://bloomington.in.gov/planning/udo>. Councilmembers and the public can find the city's Comprehensive Plan online here:

<https://bloomington.in.gov/planning/comprehensive-plan>.

Proposals to amend the text of the UDO are governed by state law under Indiana Code (IC) 36-7-4 in the "[600 Series – Zoning Ordinance](#)." As a threshold matter, state law provides that the purpose of the local planning and zoning laws are "to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end:

1. that highway systems be carefully planned;
2. that new communities grow only with adequate public way, utility, health, educational, and recreational facilities;
3. that the needs of agriculture, forestry, industry, and business be recognized in future growth;
4. that residential areas provide healthful surroundings for family life; and
5. that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds."

[I.C. 36-7-4-201](#).

Further, in considering UDO text amendments, both state and local codes require the legislative body to pay reasonable regard to:



1. the Comprehensive Plan;
2. current conditions and the character of current structures and uses in each district;
3. the most desirable use for which the land in each district is adapted;
4. the conservation of sensitive environmental features (a local criterion);
5. the conservation of property values throughout the jurisdiction; and
6. responsible development and growth.

[I.C. 36-7-4-603](#); [BMC 20.06.070\(d\)\(4\)](#).

Importantly, these are factors that a legislative body must *consider* when deliberating on zoning ordinance proposals. However, nothing in statute requires that the Council find absolute conformity with each of the factors outlined above. Instead, the Council is to take into consideration the entire constellation of the criteria, balancing the statutory factors.

Notably, Indiana courts have found that comprehensive plans are guides to community development, rather than instruments of land-use control. A municipality must consider all factors and make a balanced determination. *Borsuk v. Town of St. John*, 820 N.E.2d 118, 122 (2005).

[IC 36-7-4-607](#) provides the following procedure that applies to a proposal to amend or partially repeal the text of the UDO:

- After the Plan Commission determines its recommendation on a proposal, it certifies the proposal to the Council with either a favorable recommendation, an unfavorable recommendation, or no recommendation. This proposal received an unfavorable recommendation from the Plan Commission by a vote of 6-3. The Council must consider the Commission's recommendation before acting on the proposal.
- At the first regular meeting of the Council after the proposal is certified (or at any subsequent meeting within 90 days after the proposal is certified), the Council may adopt, reject, or amend the proposal. The Council must post and give notice at least 48 hours in advance of its intention to consider the proposal at a meeting.
- If the Council fails to act on a proposal that received a negative recommendation within 90 days after certification, the proposal is defeated.
- Assuming the Council does act within the 90 days after this proposal was certified to it, the Council can adopt, reject, or amend the proposal. If the Council amends the proposal, the Council must return it to the Plan Commission for its consideration along with a written statement of the reasons for the amendment. Doing so would start a 45-day period for the Plan Commission to consider the Council's amendment(s).



City of Bloomington Indiana

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- If the Plan Commission approves of the Council's amendment(s) or fails to act within 45 days, the ordinance would stand as passed by the Council. If the Plan Commission disapproves of the amendment or rejection, the Council's action on the original amendment or rejection stands only if confirmed by another vote of the Council within forty-five (45) days after the Plan Commission certifies its disapproval.

These detailed procedures may seem cumbersome, but they are designed to ensure that there is a dialogue between the Plan Commission and the Council.

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