



MEMO FROM COUNCIL OFFICE:

To: Members of the Common Council

From: Ash Kulak, Interim Council Attorney

Date: August 30, 2024

Re: Ordinance 2024-17 – To Amend Title 20 of the Bloomington Municipal Code – Amendment and updates related to grading permit and alignment with Title 13 and BMC 20.04 related to steep slopes

Relevant Materials

- Ordinance 2024-17
- Certification form from Plan Commission
- Attachment A & staff memo, with redline amendments showing proposed changes

Background

On August 12, 2024, the Plan Commission considered a proposal brought forward by city planning staff to make amendments to the UDO to remove language that regulates stormwater management that is now regulated by Title 13, a new Title of the Bloomington Municipal Code which was passed at the May 8, 2024 Regular Session through adoption of Ordinance 2024-08. The proposal also includes amendments related to steep slopes in alignment with state law.

The Plan Commission Case ZO-30-24 was given a recommendation of approval by a vote of 8-0-0. The August Plan Commission meeting can be viewed online on CATS TV (<https://catstv.net/m.php?q=13677>). The proposal was certified on August 14, 2024, giving the Council until November 12, 2024, 90 days from the date of certification, to act on the proposal pursuant to state law.

General Information about UDO Updates:

General information about the UDO, including the complete text of the current UDO, can be found at the Unified Development Ordinance webpage (<https://bloomington.in.gov/planning/udo>). Information about the Council's 2019 repeal and replacement of the UDO, the history of the Council review of the City's Unified Development Ordinance is also available online (<https://bloomington.in.gov/council/plan-schedule>). Finally, the City's Comprehensive Plan is also available online (<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." State law (IC 36-7-4-201) 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.”

In considering UDO text amendments, both state code ([IC 36-7-4-603](#)) and local code ([BMC 20.06.070\(d\)\(4\)](#)) 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 criteria);
5. the conservation of property values throughout the jurisdiction; and
6. responsible development and growth.

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 (Ind. 2005) (interpreting [IC 36-7-4-603](#)).

[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. All four proposals sent to the Council received a favorable recommendation by the Plan Commission (votes listed above). The Council must consider these Commission recommendations 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.



City of Bloomington Indiana

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- If the Council fails to act on a proposal that received a positive recommendation within 90 days after certification (deadlines listed above), the proposal would take effect as if it had been adopted (as certified) 90 days after certification.
- Assuming the Council does act within the 90 days after a proposal is certified to it, the Council can adopt, reject, or amend the proposal. If the Council amends or rejects a proposal, the Council must return that proposal to the Plan Commission along with a written statement of the reasons for the amendment or rejection. Doing so would start a 45-day period for the Plan Commission to consider the Council's amendment or rejection.
- If the Plan Commission approves of the Council's amendment 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 are designed to ensure that there is a dialogue between the Plan Commission and the Council.

Contact

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