



Staff Report

File #: 22-53

Version: 1

Date: 2/14/2022

Item #: 7.1a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Norman Wright, Community Development Director

SUBJECT:

2021 Unified Development Code Update - Fairview Mixed-Use Zone Amendments

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Natural Environment Stewardship; Welcoming and Livable Community

SUMMARY:

Proposed amendments to Salem Revised Code Title X (Unified Development Code) updating the Fairview Mixed-Use (FMU) Zone (SRC Chapter 530).

ISSUE:

Shall City Council advance Ordinance Bill No. 3-22 to second reading?

RECOMMENDATION:

Advance Ordinance Bill No. 3-22 to second reading.

FACTS AND FINDINGS:

Ordinance Bill No. 3-22 includes the amendments to the FMU zone that were originally included in the ordinance for the 2021 Unified Development Code update (*Ordinance Bill No. 13-21*). However, because public testimony was provided indicating a potential appeal of the ordinance to the Land Use Board of Appeals (LUBA) if the amendments to the FMU zone were adopted, the FMU zone amendments were placed in a separate ordinance.

The need to include the amendments in a separate ordinance is due to the variety of amendments included in the UDC update, including those implementing the middle housing requirements of State House Bill HB 2001 that must be adopted by a certain date. Establishing an ordinance specific to the amendments to the FMU zone allows for any appeal of those amendments to be addressed separately and avoids any unnecessary delay in the adoption of the remaining amendments and those specifically implementing HB2001.

Procedural Findings

1. Pursuant to SRC 300.1110(a)(2), the Planning Commission may initiate legislative land use proceedings by the adoption of a resolution referring the matter to public hearing for review and recommendation to the City Council.
2. On August 17, 2021, the Planning Commission initiated amendments to the Unified Development Code (UDC) and various other chapters of the Salem Revised Code (SRC) as part of the 2021 Unified Development Code update. Included in the overall package of amendments were proposed revisions to the FMU zone under SRC Chapter 530.
3. ORS 197.610 and OAR 660-018-0020 require that notice be provided to the Department of Land Conservation and Development (DLCD) on any proposed amendment to a local land use regulation at least 35 days prior to the first public hearing. Notice to DLCD was initially submitted on August 17, 2021 and was subsequently followed by a revised notice on August 31, 2021.
4. On September 10, 2021, notice of the public hearing before the Planning Commission was mailed to all affected property owners as required under ORS 227.186. Public notice, as required under SRC 300.1110(e)(1)(A), was also mailed September 15, 2021, and public notice was published in the Statesman Journal newspaper, as required under SRC 300.1110(e)(2), on September 23, 2021, and September 30, 2021.
5. On October 5, 2021, a public hearing was held before the Planning Commission to receive public testimony on the proposal. The Planning Commission voted to recommend City Council approval of the proposed amendments (**Attachment 1**).
6. On November 22, 2021, the City Council conducted first reading of Ordinance Bill No. 13-21 and voted to hold a public hearing on the proposed amendments. The hearing was scheduled for December 6, 2021. Notice of the City Council public hearing was mailed pursuant to SRC requirements on November 23, 2021 and published in the Statesman Journal newspaper.
7. On December 6, 2021, the City Council conducted a public hearing to receive evidence and

testimony on the amendments and subsequently voted to continue the hearing until December 13, 2021, to allow for submission of additional public testimony and further consideration of the amendments.

8. On December 13, 2021, the City Council voted to close the public hearing and leave the written record open until January 10, 2022, for submission of additional written evidence and testimony.
9. On January 24, 2022, the City Council conducted deliberations on the amendments, including a series of further revisions recommended by staff regarding the proposed standards for managed temporary villages, minimum and maximum parking requirements for certain uses, tree preservation requirements, and the proposed amendments to the FMU zone. In consideration of the proposed amendments, the public comments and testimony provided, and the further revisions recommended by staff, City Council voted to engross the ordinance bill and advance it to second reading.
10. The recommended further revisions to the UDC amendments approved by the Council included splitting out the amendments to the FMU. The FMU changes are incorporated in Ordinance Bill No. 3-22, scheduled for first reading on February 14, 2022.

Proposed Code Amendments

The complete text of the amendments to the FMU zone is included as Exhibit A to Ordinance Bill No. 3-22 (**Attachment 2**). In summary, the proposed amendments bring the zone into compliance with recent changes in State law (*including HB3109 concerning child day care homes and centers*); establish managed temporary villages for the unsheltered and emergency shelters as allowed uses within the zone; and address issues raised in the LUBA decision *Mumper v. City of Salem* by clarifying the relationship between the Fairview Plan and refinement plans to reflect the City's interpretation and application of FMU zone requirements in the approval of past refinement plans.

Public Testimony

Public testimony on the overall package of amendments included in the 2021 UDC update was provided during the the Planning Commission and City Council public hearings on the amendments. Public testimony provided specific to the amendments to the FMU zone included two comments in favor and one comment in opposition. The testimony provided is included as **Attachment 3**.

One comment highly recommended that City Council approve the changes to the zoning ordinance. It is explained that without the proposed changes, the properties within the master planned area which are not currently approved with a refinement plan or ones that may need amending in the future, will likely become even more uncertain as to the development potential. It is indicated that in looking back at all the refinement plans that have been approved to-date, likely none would have

withstood the rigid interpretation handed down by LUBA in the *Mumper v. City of Salem* case. The comment indicates that uncertainty as to the parameters of what and how the 270 acres can be developed, both by City staff and developers, leaves the future of the Fairview property in a state of unknown, which usually means undeveloped. It is explained that one important aspect necessary for the success of this development as envisioned by the City depends on build out of the entire master development. Unfortunately, without these staff recommended changes, such connection is unlikely any time in the foreseeable future.

The other comment submitted in favor of the amendments indicates that Simpson Hills LLC is one of the largest single land owners within the Fairview FMU zone and they support the modifications recommended by City staff. It is indicated that without the proposed modifications development on the Simpson Hills LLC property will be severely affected in a negative way.

The one comment received in opposition to the amendments recommends that the City Council not adopt the proposed revisions to the Fairview Mixed-Use (FMU) zone and indicates that if the amendments are adopted, an appeal to the Land Use Board of Appeals (LUBA) will likely follow. The comment indicates, in summary, that the amendments are internally inconsistent and inconsistent with the Fairview master plan, and clearly in response to the recent Land Use Board of Appeals (LUBA) decision, *Mumper v. City of Salem*. In *Mumper v. City of Salem* LUBA reversed the City's decision approving an application for a refinement plan and subdivision for a portion of the former Fairview Training Center site. The comment indicates that the proposed amendments weaken the standards and criteria put in place many years ago and will do a disservice to the original vision of the Fairview master plan and the Council's constituency by relegating the master plan vision for development to a mere superfluity. It is explained that if the plans or drawings included in the master plan depicting the layout of the development, including, but not limited to the location of streets, City utilities, paths/trails, open space, buildings, or specific uses is simply conceptual, then amendments to refinement plans would not actually be implementing or refining the Fairview master plan. The comment indicates that the Fairview master plan contains numerous diagrams that cannot be considered simply conceptual because the text of the plan specifically implements those diagrams. Because of this, the City cannot say that the diagrams included in the plan are conceptual without also affecting the text of the Fairview master plan.

Staff Response: The proposed amendments to the FMU zone include revisions required to bring the zone into compliance with recent changes in State law (*including HB3109 concerning child day care homes and centers*); revisions to allow managed temporary villages for the unsheltered and emergency shelters; and revisions to address issues raised in LUBA's reversal of the City's approval of a refinement plan and subdivision for approximately 14.07 acres of the former Fairview Training Center site located in an area known as "The Woods."

In *Mumper v. City of Salem*, a refinement plan and corresponding subdivision was approved by the Planning Commission for residential development of approximately 14.07 acres of the former Fairview Training Center site. The Planning Commission's decision was appealed and subsequently affirmed by the City Council and the City Council's decision was appealed and ultimately reversed by LUBA because the proposed development was found to be inconsistent with the Fairview Master

Plan.

In order to address the issues raised in the LUBA decision and amend the FMU zone in a manner that reflects its past interpretation and application in the approval of past refinement plans, a series of amendments are proposed to:

- Provide greater clarity regarding the purpose of the Fairview Plan and its regulatory authority over subsequent refinement plans.
- Revise the approval criteria for refinement plans under SRC 530.030(e) to clarify that refinement plans must be in conformance with specific portions of the Fairview plan.
- Clarify that the maps and drawings in the plan are conceptual/illustrative in nature and may be further revised by refinement plans in substantial conformance with the thirteen sustainable land use principles included in the Fairview Training Center Redevelopment Master Plan document.
- Clarify who has standing to initiate amendments to the Fairview plan and refinement plans.
- Clarify that amendments to the Fairview plan and refinement plans are actual changes to the text and/or supporting documents of the plans, not site-specific proposals for development requesting deviation from the standards of a refinement plan (*e.g. a request that would normally be addressed through a variance or adjustment to the standard rather than an amendment to the plan*).

Substantive Findings

For a code amendment to be approved the City Council must find the amendments comply with the applicable approval criteria of SRC 110.085(b). Findings demonstrating the proposal's conformance with the applicable approval criteria are included in Exhibit B to Ordinance Bill No. 3-22

(Attachment 2).

BACKGROUND:

In 2014, the Unified Development Code was completed and adopted as part of the Salem Revised Code (SRC Title X). The UDC was a complete reorganization and update of Salem's development codes. The UDC was adopted with the expectation that it would be regularly updated over time to ensure that any unanticipated issues or concerns were routinely reviewed and addressed, and its provisions were kept current and up to date.

Ordinance Bill No. 3-22 includes the revisions to the FMU zone that were originally included in the larger package of amendments included in 2021 Unified Development Code update (*Ordinance Bill No. 13-21*).

Bryce Bishop,
Planner III

Attachments:

1. Planning Commission Recommendation (October 5, 2021)

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2. Ordinance Bill No. 3-22

3. Public Testimony