



Staff Report

File #: 23-321

Version: 1

Date: 9/25/2023

Item #: 5.a.

TO: Mayor and City Council

THROUGH: Keith Stahley, City Manager

FROM: Kristin Retherford, Community and Urban Development Director

SUBJECT:

Deliberation of a Legislative Zone Change and Code Amendment to Repeal Overlay Zones in the SCAN Neighborhood.

Ward(s): 2

Councilor(s): Nishioka

Neighborhood(s): SCAN

Result Area(s): Welcoming and Livable Community.

SUMMARY:

Proposal to eliminate five overlay zones (Planning Case No. CA23-02): The Saginaw Street, Superior-Rural, Oxford-West Nob Hill, Oxford-Hoyt, and Hoyt-McGilchrist Overlay Zones. The proposal responds to a motion from City Council during their November 14, 2022 meeting.

ISSUE:

Shall City Council advance Ordinance Bill No. 5-23 for the purpose of eliminating the Saginaw Street, Superior-Rural, Oxford-West Nob Hill, Oxford-Hoyt, and Hoyt-McGilchrist Overlay Zones to second reading?

RECOMMENDATION:

Advance Ordinance Bill No. 5-23 for the purpose of eliminating the Saginaw Street, Superior-Rural, Oxford-West Nob Hill, Oxford-Hoyt, and Hoyt-McGilchrist Overlay Zones to second reading.

FACTS AND FINDINGS:

Procedural Findings

1. On November 14, 2022, the City Council directed staff to create an ordinance and schedule a public hearing to consider eliminating the Saginaw Street Overlay Zone, Superior-Rural Overlay Zone, Oxford-West Nob Hill Overlay Zone, Oxford-Hoyt Overlay Zone, and Hoyt-McGilchrist Overlay Zone.
2. Staff met with the SCAN Land Use Committee on January 12, 2023 and attended the SCAN Neighborhood Association meeting on February 8, 2023 to explain the proposed zone change, answer questions, and listen to the neighborhood's input.
3. Staff mailed out flyers to owners of affected properties on January 19, 2023, describing the proposed zone change and providing opportunities to discuss the proposal with staff.
4. The proposed zone change is a legislative zone change, which may be initiated by the City Council under SRC 265.010(c). The proposed code amendment is an amendment to the Unified Development Code (UDC), which is a legislative land use decision under SRC 110.085.
5. The City Council adopted Resolution No. 2023-9 on March 13, 2023 to initiate the proposed zone change and code amendment.
6. On March 13, 2023, the City Council voted to hold a public hearing of Ordinance Bill No. 5-23.
7. On June 5, 2023, notice of the public hearing was provided as required by Oregon Revised Statutes and Salem Revised Code.
8. On June 26, 2023, City Council rejected the legislative zone change and code amendment to eliminate the Saginaw Street, Superior-Rural, Oxford-West Nob Hill, Oxford-Hoyt, and Hoyt-McGilchrist Overlay Zones.
9. On July 10, 2023, City Council adopted a motion to reconsider the proposed amendment to eliminate the Saginaw Street, Superior-Rural, Oxford-West Nob Hill, Oxford-Hoyt, and Hoyt-McGilchrist Overlay Zones and delayed deliberation to September 25, 2023.
10. Notice of deliberations was provided to Salem neighborhood associations and those that previously submitted testimony on September 5, 2023.

Project Overview

During the June 26, 2023 City Council meeting, the Council discussed the proposal to eliminate the Saginaw Street, Superior-Rural, Oxford-West Nob Hill, Oxford-Hoyt, and Hoyt-McGilchrist Overlay Zones. (The staff report from the June 26 public hearing can be found here:

<https://salem.legistar.com/LegislationDetail.aspx?ID=6262838&GUID=957C4F82-CE6D-4A25-95F9-0CDEEB708C67>) The discussion included questions about how historic buildings in the vicinity of the overlay zones would be affected by the proposed zone change, and what would be required to create a new National Register Historic District in the SCAN neighborhood. These questions - and others that have arisen since the June 26 public hearing - are answered below.

Questions and Answers

1) What is a National Register Historic District?

A National Register Historic District is an area that has been listed on the National Register of Historic Places by the National Park Service for its age, historic significance, and integrity. Historic districts have a concentration of thematically related historic resources that together convey a significant story about their place. There are different types of National Register Historic Districts, including residential historic districts.

Creating such a district allows contributing buildings to qualify for local, state, and federal grant money to help maintain their historic significance through maintenance and renovations. While National Register listing is honorary, all of Salem's National Register Historic Districts are also designated as local historic districts, which impose additional restrictions on development to help preserve buildings and ensure they are compatible with the character of the district. The Unified Development Code (UDC) includes design criteria to regulate when buildings are constructed or existing structures are altered or demolished within a designated historic district.

2) What is the process for creating a National Register Residential Historic District?

Designating a new National Register Residential Historic District requires coordination between the residents of a proposed district, the City, and the State Historic Preservation Office (SHPO). It also requires that at least 51% of property owners within any proposed district support the application to have it nationally designated. A survey of the buildings in the project area is done to determine their historic character and an application must be prepared. Then it is submitted to the SHPO, reviewed by the Salem Historic Landmarks Commission and City Council, and a recommendation is made by the State Advisory Committee on Historic Preservation to the National Parks Service. If the National Parks Service accepts the nomination, it will be listed as a district, and City Council can then choose to designate it as a local district as well. This process takes time and resources, both for the residents submitting the application and City staff who often support the nomination process. Future City budget allocations would be required for staff to effectively support a nomination. The City of Salem's process for designation of a historic district is included at **Attachment 6**.

3) How would designating an area as a National Register Residential Historic District impact maximum building heights?

The base zoning of the properties within the overlays proposed to be eliminated is a mix of Mixed Use I (MU-I) and Mixed Use II (MU-II) zoning. In these zones, buildings on lots that are contiguous to a National Register Residential Historic District are limited to a maximum height of 45 feet.

This height restriction applies to lots that abut or are across an alley from a National Register Residential Historic District. However, it does not apply across streets, nor does it apply to buildings on lots **within** a National Register Residential Historic District. Within a residential historic district, new buildings are required by to comply with the height in the base zone and be compatible with other buildings in that district. The historic preservation code does not establish a specific maximum height but instead considers compatibility within historic districts; compatibility is evaluated for size, scale, and height.

4) Is maximum building height affected when a lot is adjacent to a historic building that is not within a National Register Residential Historic District?

No, the maximum height restriction of 45 feet in the MU-I and MU-II zones only applies to

properties contiguous to a National Register Residential Historic District; it does **not** apply to lots adjacent to historic buildings that are individually listed on the National Register of Historic Places. The maximum building height on such lots is the maximum building height permitted in the zone.

5) *What is the maximum height allowed in the MU-I and MU-II zones when not contiguous to a National Register Residential Historic District?*

When not contiguous to a National Register Residential Historic District, the maximum height allowed in the MU-I zone is 65 feet, and the maximum height allowed in the MU-II zone is 55 feet. In these zones, building setbacks adjacent to residential zoning are tied to building height. The minimum setback in both zones is 10 feet plus 1.5 feet for each foot of building height above 15 feet. For example, a building 25 feet tall would require a 25-foot minimum setback from adjacent residential zoning, and a 55-foot tall building would require a 70-foot minimum setback adjacent to residential zoning. This setback applies across alleys but does not apply across streets. This setback requirement helps to ensure that there is a buffer between taller buildings in the MU-I and MU-II zones and shorter buildings in residential zones.

6) *What is a Salem Heritage Neighborhood, and how does it differ from a historic district?*

A Salem Heritage Neighborhood is a local designation intended to encourage Salem neighborhoods to celebrate their history and provide an opportunity for them to engage in a positive way with the City's Historic Preservation Program. Neighborhood associations may apply to recognize portions of their neighborhood as a Salem Heritage Neighborhood, as long as the area is not already within a designated historic district. Recognition as a Salem Heritage Neighborhood is not regulatory but enables the neighborhood to receive City funding to promote and interpret their history. It supports the neighborhood's efforts to learn more about the history of their built environment and to celebrate their unique historical attributes. This process may include preliminary steps to support designation of a historic district in the future, but it does not require a neighborhood to apply for such a district.

Heritage neighborhoods are different from historic districts in several ways. For example, becoming a heritage neighborhood does not add any additional restrictions on development. It also does not qualify specific properties within the neighborhood for historic grant funding. In addition, the maximum height restriction of 45 feet in the MU-I and MU-II zones that applies to properties contiguous to a National Register Residential Historic District does **not** apply to properties within or contiguous to a heritage neighborhood. Three neighborhoods have participated in the Heritage Neighborhood program: Grant, SESNA and Highland. SCAN has requested to be the next neighborhood to participate in the program.

7) *Is the City Council required to take the same action on all of the overlay zones proposed for elimination?*

No, the City Council does not need to treat all of the overlay zones the same. Council could vote to eliminate one or more overlay zones and retain others.

8) *Does the City Council have the option to let some overlay zones sunset after a certain period of time?*

Yes. For example, the City Council could vote to eliminate some of the overlay zones immediately and retain others for a period of time, after which time they would also be eliminated. If a sunset clause were established, the City Council would not need to vote again at the end of the sunset period; the overlay zones subject to the sunset clause would automatically be eliminated.

Public Comment

No additional public comments had been received between close of the public hearing and the time this staff report was prepared.

Substantive Findings

The proposal includes amendments to the zoning map and the Unified Development Code (UDC).

1. SRC 265.010 establishes the following approval criteria for a legislative zone change:
 - a. The zone change is in the best interest of the public health, safety, and welfare of the City.
 - b. The zone change complies with the Salem Area Comprehensive Plan, applicable statewide planning goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.
 - c. If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or a comprehensive plan change from a commercial or employment designation to any other designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the comprehensive plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the comprehensive plan to address the proposed zone change; or include both the demonstration and an amendment to the comprehensive plan.
 - d. The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.
2. SRC 110.085(b) establishes the following approval criteria for a legislative amendment to the UDC:
 - a. The amendment is in the best interest of the public health, safety, and welfare of the City.
 - b. The amendment conforms with the Salem Area Comprehensive Plan, applicable statewide planning goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.

Findings demonstrating the proposal's conformance with the applicable approval criteria are included in Exhibit C to Ordinance Bill No. 18-22 (**Attachment 4**).

BACKGROUND:

The City Council passed a motion on November 14, 2022 directing staff to bring forward a new ordinance to eliminate the overlay zones near Commercial Street SE in the SCAN neighborhood. The proposed legislative zone change and code amendment responds to this motion from Council.

Austin Ross
Planner II

Attachments:

1. Ordinance Bill No. 5-23
2. Exhibit A to Ordinance Bill 5-23 - Map of Overlays Proposed to be Eliminated
3. Exhibit B to Ordinance Bill 5-23 - Proposed Code Changes
4. Exhibit C to Ordinance Bill 5-23 - Findings
5. Properties within Overlays
6. Process for Designation of a Historic District