

# Development Law Digest

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

by Charles F. Marshall and Andrew T. Tripp

**WHAT IS AN NCOD?** An NCOD is a zoning designation that seeks to “preserve and enhance the general quality and appearance of older neighborhoods.” Generally, NCODs are a planning tool for neighborhoods that are at least 25 years old, contain unifying distinctive elements and contain at least 15 contiguous acres with at least 75% of the land developed.

The NCOD designation essentially creates a smaller, tailored zoning district. For example, if a given neighborhood is designated R-10, an NCOD could decrease the permitted density per acre and allow fewer new homes to be constructed in the area or could increase setback limits. An application for the generation of a Neighborhood Plan can be initiated by any resident in a neighborhood.

Under present law, the Planning Department works with the applicant to generate a Neighborhood Plan for the potential NCOD. The Neighborhood Plan would contain the rules and regulations governing new development in that neighborhood. The applicant(s) would work with the Planning Department to create regulations contained in a Neighborhood Plan and submit it to the City Council for approval as an amendment to the Comprehensive Plan. If the City Council adopts the amendment, the actual petition to re-zone the NCOD to conform to the Neighborhood Plan must be signed by a majority of the property owners within the neighborhood. The process generally took approximately 14 months due to the lengthy Neighborhood Plan process.

**PROPOSED CHANGES TO THE NCOD PROCESS.** The City Council is seeking to streamline the NCOD process as an alternative to more onerous and sweeping regulations of infill development. The text change proposed by the Planning Department TC-4-08 includes the following key revisions:

\* *Additional Applicants Required to Initiate NCOD Analysis.* The revisions would require three residents to initiate an NCOD analysis rather than just one. The petition to initiate an analysis would need approval from the City Council and then would be referred to the Planning Department.

\* *Specific List of Potential Neighborhood Regulations.* The revisions would designate potential characteristics or elements of a neighborhood that could be regulated pursuant to an NCOD (see adjacent box). Any petition to initiate an analysis would identify which characteristics should be considered for regulation.

\* *More Responsibility to Planning Department.* The revisions would eliminate the lengthy Neighborhood Plan process. Instead, the Planning Department would be charged to perform an analysis of the neighborhood elements that are sought to be regulated by the proposed NCOD (see adjacent box). The Planning Department would report its analysis to the neighborhood and then to the City Council.

## NEIGHBORHOOD CHARACTERISTICS SUBJECT TO REGULATIONS:

The revisions propose a list of **BUILT ENVIRONMENTAL CHARACTERISTICS AND REGULATIONS** that may be subject to regulation in an NCOD. They include lot size, density per net acre, building entrances, building height, building placement on the lot, including building setbacks from the streets and property lines, and distances between buildings, vehicular surface area placement on the lot, greenway dimension and trail construction and public street construction, including right-of-way widths, street design and sidewalks. This definition sets the scope of what elements of neighborhood construction can be addressed pursuant to the NCOD regulations.

\* *Majority Still Required to Subject Neighborhood to NCOD Regulations.* Even if the City Council adopts the proposed regulations for an NCOD, the regulations do not automatically apply to the neighborhood. Rather, a majority (51%) of the residents must petition to re-zone the neighborhood to a zoning district based on the new regulations. The petition must be filed within 4 years after the regulations are adopted. Because this requires a change to the zoning map, residents opposed to the re-zoning could file a protest petition. If the re-zoning petition is denied, a two (2) year waiting period before re-filing would follow.

**OPPORTUNITIES TO WEIGH IN.** Opponents to the creation of NCOD regulations and re-zoning would still have a number of opportunities to oppose the process, including (1) at the meeting at which the Council considers whether to refer the proposed neighborhood regulations to the Planning Department, (2) at the legally-noticed neighborhood meeting at which the Planning Department discusses its analysis, (3) at the meeting at which the Council considers whether to propose a text change adopting the regulations, (4) at the public hearing at which the City Council considers whether to adopt the regulations or (5) during the legally-noticed re-zoning process where the Council considers whether to establish an NCOD on the zoning map.

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