



Staff Report

To: Planning Advisory Board
From: Brigid Reynolds, Director of Community Planning
Meeting Date: March 3, 2021

Purpose: To hold a public hearing to receive testimony for Ordinance No. 1077 for a new Ch. 18.26 Planned Unit Development (PUD) and related amendments to Ch. 18.01 definitions and Ch. 18.09.010 Uses and receive the findings of fact report and recommend the packet be forwarded to Council for its consideration and first reading.

Background

Placemakers have been preparing a draft PUD code, Ch. 18.26 since March. This initiative began as the developers, South Whidbey LLC, requested to modify the terms of the original development agreement for the Coles Valley property. At its regular Council meeting on August 19, 2019 the following motion was passed:

To direct staff to begin the process to prepare a Memorandum of Understanding, letter of intent with the developer, South Whidbey LLC, to continue to move this alternative development forward.

A MOU was signed, Placemakers was hired by the developers and the code has been drafted. An initial community meeting was held on February 27, 2020 to seek input into community priorities and concerns. The consultants also met with Council and PAB on February 28th for further discussion. These discussions helped guide the consultants to prepare a draft code.

A [project page](#) was created on the City's website to enable interested people to keep track of the project.

The draft code has been completed and has been reviewed by staff, Robin Nelson, City consulting engineer and Mike Kenyon, City attorney. At PAB's regular meeting on September 2, 2020 the consultants met to present and discuss the draft code. A FAQ document was prepared in advance of the PAB meeting to make the code more accessible. Some members of Council were also present at that meeting. On September 24, 2020 a virtual community meeting was held to present the draft code to the community. The consultants have incorporated the comments.

At its November 4th meeting PAB reviewed the draft and made the following recommendation: *Moved by Rhonda and seconded by Greg to recommend that staff prepare the ordinance for Ch. 18.26, complete a SEPA notice and determination and to submit the ordinance and new Ch. 18.26 to Department of Commerce subject to the following possible amendments:*

- *Playground fence should be less restrictive and changed to some form of delineation;*
- *Restrict the use of pesticide;*
- *Maker's space definition needs to be refined. It is too broad; and*
- *Foster home is not permitted in PUD-H and should be.*

The PAB voted unanimously in favor of the motion.

Following the November 4th meeting, staff discussed the recommended amendments with the consultants and did some research. At the December 2nd PAB meeting staff presented the following:

- Fencing for playgrounds: Brigid talked to consultants about fencing and it is not unreasonable to require fencing around a playground. No specifics on the type of fencing required therefore it gives the developer flexibility depending on the intended use.
- Pesticides: Brigid did some research and the use of pesticides cannot be regulated through zoning. PAB suggest regulating pesticides something to think about.
- Consultants will come back with better definition for maker's space.
- Foster homes in PUD-H and multi-family not permitted but are permitted in every other zone. It is appropriate as it is a high-density zone. PAB thinks it might be overreaching to not allow foster homes in PUD-H and should not be excluded. Staff says it is excluded in CB zone already PAB motions that foster homes be permitted in the PUD-H.

At the January 6th PAB meeting the question of how affordable housing will be secured with any PUD application was discussed. The draft code requires a development agreement to be negotiated and secured prior to the City issuing any approvals to proceed. A development agreement is a contract between the City and developer. It provides certainty to the developer that their project will not be subject to any subsequent changes in the City's zoning code over the course of development. It also contracts the developer to provide benefits to the city, such as infrastructure improvements, public open space, or other matters negotiated in the agreement, in exchange for that certainty. The development agreement enables the local government and developer to plan for the development and services, infrastructure, or other facilities related to the development. As per RCW 36.70B.170 development agreements must contain provisions to assure permanent affordable housing is developed or secured within the application area. Staff anticipate that Council would establish a negotiating committee to guide the process and make recommendations to Council. As laid out in the draft code, the developer would be responsible for covering any associated costs. Ultimately, the City is not required to issue any permits until the development agreement has been completed and signed by both parties.

The draft Ch. 18.26 was presented to City Council at its January 19, 2021 meeting. Council requested that Ch. 18.09 Permitted Uses be amended to permit Foster Homes as a secondary use in the Central Business zone. The final draft includes that amendment. Council also reaffirmed that the Development Agreement will be the mechanism by which affordable housing will be negotiated and secured for any future applications.

Discussion

Some highlights of the draft code:

- Eligible parcels must be five acres or larger (net of critical areas) and are identified in the Comprehensive Plan on the overlay map, i.e. LU-7.
- A development agreement is required to be approved by Council.
- The inclusion of affordable housing into the development is a required element of the development agreement. This is a negotiation between the City and developer.
- Intensity districts are established: PUD-L, PUD-M and PUD-H and a development must have a minimum of two intensity districts.
- New standards for two streets and lanes that include provisions for pedestrian and bicycling
- Lot sizes are governed by minimum and maximum widths.

- A mix of housing types is required based upon the minimum of two intensity districts.
- Civic or open space is required and the size is based upon the size of the overall development.
- On-site parking requirements are reduced.
- Bicycle parking is required.
- Development in and around critical areas are still governed by Ch. 16.
- Illustrations that provide clarity of the regulations.
- Detailed section outlining the application and approval process.

Adopting a new Ch. 18.26 triggers additional amendments to the zoning code:

- CH. 18.01.010 definitions to add new definitions
- Ch. 18.09 Land Uses to expand the permitted uses as outlined in the PUD code.

Conclusion

The draft Ch. 18.26 and related code amendments have met the review period required by the Department of Commerce. The required SEPA notice and a determination of non-significance has been issued. No comments were received during the SEPA comment period. The public hearing notice was made consistent with LMC section 18.36.020.

Attachment No. 1 – Comments received during the process

Attachment No. 2 – Ordinance No. 1077

Exhibit A to Ordinance No. 1076 contains the Findings of Facts and recommendations to the City Council.

Exhibit B – Ch. 18.01.090 Definitions

Exhibit C – Ch. 18.09 Land Use Table