Advancing Equity in Rezoning

Project Background Report

January 2022

DENVER
THE MILE HIGH CITY
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Introduction

As Denver continues to grow and evolve, city and community leaders have called for updates to how rules for using property are changed. This public process, referred to as “rezoning,” changes the uses and types of buildings that are allowed on a property by changing its underlying zone district.

With an increasing number of rezonings happening over time, it’s critical that we ensure the process is equitable, transparent, accessible, and advances citywide goals.

Project Objective

This project will evaluate the applicant-driven rezoning process and criteria to understand how they can be modernized to advance Blueprint Denver’s recommendations for improving access to opportunity, reducing vulnerability to displacement, and expanding housing and jobs diversity. The project will update the rezoning process so that the process is more equitable, transparent, accessible, and results in decisions for changing a zone district that are based on citywide goals and policies.

The expected project outcome will be City Council adoption of a text amendment to the Denver Zoning Code and possibly updates to the Denver Revised Municipal Code. The Department of Community Planning and Development (CPD) will also update processes and procedures as needed to implement the project.

Guiding Principles

- Update the rezoning process to ensure that it is a rezoning process that is transparent, equitable, and accessible for all.
- Identify rezoning review criteria that inform better decisions and achieve citywide equity goals.
- Create requirements that respond to varied equity impacts of rezonings.

Citywide Plans

In 2019, City Council adopted Comprehensive Plan 2040 and Blueprint Denver. These two plans provide citywide guidance with clear policies to direct future development and land use. Both plans focus on integrating equity into planning to achieve the vision for inclusive, complete neighborhoods.

Comprehensive Plan 2040

Comprehensive Plan 2040 provides a 20-year vision for Denver and its people. It is a guiding document for shaping the city and includes six vision elements that serve as the basis for citywide goals. One of the vision elements is for Denver to be an equitable, inclusive community with a high quality of life for all residents, regardless of income level, race, ethnicity, gender, ability or age.
Blueprint Denver

Blueprint Denver is a citywide land use and transportation plan that is an adopted supplement to Comprehensive Plan 2040. Blueprint Denver identifies three equity concepts that should be considered when making land use decisions: improving access to opportunity, reducing vulnerability to displacement, and expanding housing and jobs diversity. In addition to the equity concepts, Blueprint Denver has specific guidance for this project:

- “...The city should consider adjustments to the applicant-driven rezoning process to better address important topics revealed by the equity concepts— including housing choice, affordability and mitigating involuntary displacement. This could include developing a predictable and consistent process for applicants to commit to certain outcomes at the time of rezoning, such as developing a certain number of income-restricted units. Implementing these changes may require changes in the process and procedures and/or a text amendment” (p. 31)
- “Create tools to increase access to the rezoning process, especially for underrepresented communities” (p. 74)

What Does Equity Mean for Denver?

The city defines equity as “when everyone, regardless of who they are or where they come from, has the opportunity to thrive. Where there is equity, a person’s identity does not determine their outcome. Equitable, inclusive communities are places of value that provide access to resources and opportunities for all people to improve the quality of their life. As a city, we advance equity by serving individuals, families and communities in a manner that reduces or eliminates persistent institutional biases and barriers based on race, ability, gender identity and sexual orientation, age and other factors” (Denver Comprehensive Plan 2040 p. 31).

The Advancing Equity in Rezoning project aims to refresh the rezoning process with a focus on the core equity concepts defined in Denver’s citywide plans.
The project will take about one year to complete and is anticipated to conclude at the end of 2022. During this time, city planners will work with the community, industry professionals, advocacy groups and elected officials to develop recommended changes to the rezoning process. This project will include seven phases:

**Phase 1. Kick off the Project (Winter ‘21 - ‘22)**
Compile background information about Denver’s rezoning process and initiate community engagement, including the first Task Force meeting.

**Phase 2. Analyze and Identify the Problem (Winter/Spring ‘22)**
Research, review, and identify opportunities to improve the rezoning process. Complete best practice research of Denver and peer cities. Continue task force meetings and develop a problem statement, goals, and objectives for the project.

**Phase 3. Evaluate Alternatives (Spring/Summer ‘22)**
Consider public and task force feedback and guidance to develop alternatives that will solve for the identified goals and objectives.

**Phase 4. Identify Preferred Approach (Summer ‘22)**
Fine-tune the alternatives to reach a recommended strategy to achieve the identified goals and objectives.

**Phase 5. Develop the Tools (Fall ‘22)**
Draft the tools (including draft text amendment language to the Denver Zoning Code) to implement the recommended strategy.

**Phase 6. Public Review and Adoption Process (Fall/Winter ‘22)**
Adopt the text amendment that was developed through this project. This involves public hearings with Planning Board and City Council.

**Phase 7. Implement Updated Rules (Winter ‘22 & Beyond)**
New and future rezoning requests will be required to proceed through the new process adopted by City Council. Outcomes will be tracked to measure the success of the project.
Community Engagement

Task Force
The project will have a task force of about 20-25 members that will meet on a recurring basis throughout the duration of the project. The task force will assist city staff in reviewing best practices, identifying key issues, and refining alternatives and recommendations. The task force will be responsible for providing regular feedback, soliciting and understanding the broader community’s feedback, building consensus around key recommendations, and advocating for the project. To ensure a well-informed and inclusive process, the task force will represent a broad cross-section of residents (both property owners and renters), equity advocates, elected officials, developers, land use planners, neighborhood groups, and other stakeholders. Members of the public are welcome to observe meetings.

Focus Groups
The city will gather focus groups at key decision points in the process to ensure participation from underrepresented communities and experts on specific subjects. At the beginning of the process, the focus groups will help to (1) identify the challenges that affected communities are facing, (2) identify lessons learned from relevant efforts and peer cities, and (3) identify current barriers and/or challenges within the rezoning process and criteria to achieving equitable development in Denver. During the evaluation phase of the project, the focus groups will (1) test out and refine different strategies, and (2) explore the potential impacts of proposed approaches on vulnerable communities, rezoning applicants, and residents. Summaries will be made available to the task force and on the project website.

Other Engagement Strategies
Denver residents will be actively involved by attending meetings, reviewing materials, asking questions, and providing feedback. Active participation by the community is important for the success of the project.

Community Meetings
Community meetings will be held to give updates on the project and to receive a broad range of feedback from Denver residents at key milestones.

Community Organizations and Groups
The project will engage existing organizations and groups. One of the most effective means of reaching diverse representation of populations is through existing networks of groups and organizations who will receive informational updates and invited to provide feedback.

Project Webpage
The dedicated project webpage serves as a centralized location for project information. The project webpage will include an overview and regular updates, opportunities for public input, a project timeline, information about the task force and its meetings, and proposed changes to the rezoning process. Please visit the project webpage at www.denvergov.org/equityinrezoning

Communications
Below are the other communication types that will commonly be used to share project information and input opportunities:

- Email newsletters (City, Registered Neighborhood Organizations, City Council)
- Council office communications
- Social media
- Office hours
- Focused population engagement
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Zoning Overview

Put simply, zoning determines how someone can use their property and the size and location of buildings constructed on it. Zoning is a tool that most cities use to govern “uses” (e.g. residential, commercial, or industrial), the size of buildings, and how buildings relate to their surroundings, including other buildings, open spaces, and the street. Zoning began as a method to place compatible building or property uses close to one another, while separating those that may be inharmonious, by creating “zones.”

How Does Zoning Work in Denver?

The Denver Zoning Code was adopted by City Council in 2010. When adopted, about 75 percent of the city was rezoned to zone districts in the new code. The remaining 25 percent of the city is governed by Former Chapter 59 of the Denver Revised Municipal Code because it had custom zoning (Planned Unit Development, waivers and conditions, etc.), and without a clear “like-for-like” analogue in the new code, their rezoning was deferred pending further analysis and outreach. Many of the properties remaining in the old code have since been rezoned to apply the Denver Zoning Code’s modern building form, parking and use standards.

The Denver Zoning Code organizes areas of the city by “neighborhood context,” and aligns land use regulations to the relative intensity of each neighborhood context. Within each neighborhood context, a range of zone districts provides different building design standards and uses. Similar zone districts in different neighborhood contexts will vary in their characteristics and standards.

The highest-intensity neighborhood contexts can be found Downtown, along corridors and in high-intensity, transit-served areas like the 38th and Blake Station area of Five Points. Neighborhood contexts become less intense further from the Downtown core, reflecting block sizes and historical patterns in those areas. For example, low-intensity residential zone districts in the Urban Neighborhood Context are tailored to the smaller lots, shallower setbacks and alleys typically found there, while the Suburban Neighborhood Context’s regulations respond to the curvilinear streets, larger lots and lack of alley access in those areas.

Like zoning codes in most major U.S. cities, the Denver Zoning Code aims to make general regulations for a Neighborhood Context work for nearly all properties found in that area, minimizing the need for custom, site-specific zoning for all but a handful of unique situations.
How Can a Property’s Zone District be Changed?

A change to the zone district applied to a property is called an Official Map Amendment, or “Rezoning.” A person, or applicant must go through a specified public process if they want to change the zone district that applies to a property. Denver Zoning Code Section 12.4.10 establishes the process for rezoning properties and the criteria that must be met for a rezoning to be approved. A rezoning can be adopted for several reasons, including:

• To correct an error in the map, such as a typo inadvertently included in a site-specific custom zone district.
• To respond to changed or changing conditions in the local area or citywide, such as recent housing and job growth around a new transit station or a citywide need for affordable housing options.
• To implement policies in adopted plans, such as local recommendations to allow more building height along a transit corridor in developments that provide affordable housing.
• To change regulations or restrictions in an area such as allowing a mix of uses (where called for in an adopted plan) that encourages walkability and physical activity.

Rezoning is a public process that typically begins with an application identifying the properties where the change in zone district is proposed. From the time an application is submitted, rezoning can take four to six or more months, depending on the complexity of the case, and involves public hearings before the Planning Board and Denver City Council. The final step for a rezoning request includes a review and vote by City Council to approve or deny the request followed by the Mayor signing the rezoning bill. Neighbors, neighborhood organizations and other stakeholders have several opportunities to participate in a rezoning by providing written and spoken input.

How does the Denver Zoning Code get Updated?

By City Charter, the Denver City Council has the authority to adopt and change the Denver Zoning Code, subject to mayoral approval. A Council-adopted change to a regulation in the Denver Zoning Code (such as to a minimum parking requirement) is called a Text Amendment.

Recent Changes to the Rezoning Process

In recent years, the Denver City Council has adopted incremental changes to the rezoning process. Below is a summary of significant changes.

• January 2008 - City Council changed the rules about who can apply for a rezoning and required that private applicants own at least 51% of the area of land in the rezoning proposal.
• June 2010 - With the adoption of the Denver Zoning Code for most of the city, the rezoning process was rewritten and carried forward some elements from Former Chapter 59 and added others. The changes included:
  ◊ Required CPD to send email notice to registered neighborhood organizations (RNOs) and City Council offices when a revised application for rezoning is submitted after the first round of staff review.
  ◊ Required Planning Board public hearings for all rezoning applications.
  ◊ Clarified and amended existing review criteria.
  ◊ Added new rezoning review criteria.
  ◊ Improved clarity of processes and procedures.
• June 2015 - Denver adopted a change to require an email notification of RNOs and City Council offices when a complete rezoning application is received.
• May 2017 - Denver removed the minimum area requirements for most rezonings. Prior to this change, some rezoning applicants would expand the area of the rezoning beyond what they needed for redevelopment, or rezone to a more intense district that did not have a minimum area requirement.
• April 2018 - Denver changed the review criteria to include additional justifying circumstances to give reason for a rezoning application. This text amendment enabled a city adopted plan to justify a rezoning request when it is in the public interest. It also made retention of Former Chapter 59 zoning a justifying circumstance for rezoning to a Denver Zoning Code district.
• June 2018 - A City Council member sponsored text amendment that required CPD to send two U.S.P.S. mail notices to all property owners within 200 feet of a proposed rezoning. Postcards are sent both at the time the application is received and again at least 15 days before the Planning Board public hearing.

Rather than continue this piecemeal approach to changing the rezoning rules, the Advancing Equity in Rezoning project will review the rezoning rules and outcomes comprehensively.
Rezoning Trends

In recent years, staff has performed about 200 pre-application reviews annually, which are preliminary reviews required prior to a formal submittal. In 2021, the number of pre-application review requests sharply increased to 281. On average, only 25% of those rezoning pre-applications proceed to become an actual map amendment application.

Even though the percentage of rezoning applications that result in a change to the property’s zone district is low compared to the pre-applications received, Denver’s approved rezonings exceed the number of approved rezonings seen in other peer cities. Denver’s rezoning process allows speculative rezonings, which means a property owner can request a change to the zone district without accompanying plans to redevelop the site and with the intention of selling the property with the new entitlement. Since 2010, City Council has adopted about 400 rezonings, ranging in size from single parcels to whole neighborhoods.

Landowners and developers often seek rezonings to use the land in a more intensive way or to expand the permitted uses on the site. Because of this, there is a perceived connection between rezonings and active development throughout the city. However, only about 10% of site development plans, or new development projects, start as a rezoning, which means most major development in Denver is “as-of-right” and no rezoning is needed for a project to be constructed.

Generally, the number of rezonings adopted annually has risen since the first year after adoption of the Denver Zoning Code, though they remain below pre-2010 levels. There were 11 rezonings in 2010, when most applicant-driven rezonings could be included in to the citywide rezoning change instead of being processed individually. Recent years have seen a particularly marked increase, with 45 rezonings approved in 2019 and 52 approved in 2020.

Who Can Rezone a Property?

A rezoning may be initiated by the Denver City Council or an individual City Council member, the Executive Director of Community Planning and Development or their designee, owners of the land area subject to the rezoning application (or their authorized representative), or a group of owners of at least 51% of the land area subject to the application.

Legislative Rezoning

Legislative rezonings are those proposed by City Council members or CPD to implement adopted policy, typically for a large area (rather than just a few parcels). Examples include rezoning a neighborhood to allow accessory dwelling units (ADUs) or to establish a design overlay district. Legislative rezonings need not demonstrate consistency with the final two criteria described on the next page (justifying circumstances and consistency with zone district purpose and intent).

Applicant-Initiated Rezoning

Currently, the most common type of rezoning in Denver is initiated by property owners or their representatives. These rezoning applications often precede development on a property when the existing zone district does not provide the entitlements for the property owner’s desired development or changes to the property and its uses. For City Council to adopt such a rezoning, the applicant must prove – and ultimately the City Council must find – that it meets the five criteria from Denver Zoning Code Section 12.4.10 on the following page.

This graph shows the number of rezonings approved each calendar year.

* The number of rezonings in 2021 is still being finalized
Rezoning Review Criteria

Below are the specific review criteria referenced directly from the Denver Zoning Code for zone map amendments, or rezonings, that must be met for a rezoning to be approved. CPD staff and Planning Board use these criteria to review an application and make recommendations, and City Council uses these criteria when deliberating and voting to approve or deny a rezoning application. The italic text provides an explanation or examples of the criteria.

12.4.10.7 General Review Criteria Applicable to All Zone Map Amendments
The City Council may Approve an official map amendment if the proposed rezoning complies with all of the following criteria:

12.4.10.7.A Consistency with Adopted Plans
That the proposed official map amendment is consistent with the City’s adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of the adoption of the City’s plan.

◊ This typically means that the rezoning must be consistent with goals and the future vision described in the Denver Comprehensive Plan 2040, Blueprint Denver, and adopted neighborhood plans, station area plans or other area plans developed and adopted in the Neighborhood Planning Initiative.

12.4.10.7.B Uniformity of District Regulations and Restrictions
That the proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.

◊ This means that regulations for the subject property would be consistent with those for other properties around the city with the same zone district. For example, setbacks, building height, lot coverage and other regulations for a residential property in an S-SU-D (a Suburban Neighborhood Context, single-unit zone district intended for areas where parcels are platted at 6,000 square feet) in the Harvey Park neighborhood as it would in the University Hills neighborhood.

12.4.10.7.C Public Health, Safety, and Welfare
That the proposed official map amendment furthers the public health, safety and general welfare of the City.

◊ This is generally interpreted to mean that the proposed rezoning furthers land use policies set forth in adopted plans, which aim to ensure residents have access to daily needs, employment, open space and health care that supports a healthy, active lifestyle.

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12.4.10.8 Additional Review Criteria for Non-Legislative Rezonings

In addition to compliance with the general review criteria stated in Section 12.4.10.7, the City Council may approve an official map amendment that the City Attorney has determined is not a legislative rezoning only if the City Council finds the application meets the following criteria:

12.4.10.8.A Justifying Circumstances

That at least one of the following justifying circumstances exists for the proposed rezoning. Applicable justifying circumstances paraphrased from the Code are:

1. The existing zoning of the land was the result of an error;
2. The existing zoning of the land was based on a mistake of fact;
3. The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, such as steep slopes, existence in a floodplain, presence of unstable soils, or inadequate drainage;
4. Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include:

   a. Changed or changing conditions in a particular area, or in the city generally; or,
   ◊ Examples of changing conditions could include the evolution of land uses near a station or transit corridor, or the ongoing need for affordable housing city-wide.

   b. A City adopted plan; or
   ◊ If a city adopted plan such as the updated Blueprint Denver adopted in 2019, was adopted after the existing zone district was established, the goals, policies, strategies, or future designations may provide a justifying circumstance for a rezoning.

   c. That the property is part of the City’s land area still governed under the zoning code that preceded the Denver Zoning Code, known as Former Chapter 59.
   ◊ Properties that retained Former Chapter 59 zoning, and are seeking a rezoning to a zone district in the current Denver Zoning Code.

5. It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code. This justifying circumstance might be appropriate, for example, where a newly adopted plan recommends application of place-specific design standards that build on those for the underlying zone district, as would be found in an Overlay Zone District.
   ◊ Most applicant-initiated rezonings apply the fourth option above: Changed or changing conditions, often citing the adoption of Blueprint Denver or an Area Plan since zoning for the property was last updated.

12.4.10.8.A Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

That the proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed zone district.

◊ The Denver Zoning Code sets forth intended appropriate locations for all zone districts. For example, a C-MX-8 zone district (Urban Center, Mixed Use, up to 8 stories) would be appropriate where dense, walkable development of 2 to 8 stories is desired, at locations areas or intersections served primarily by arterial streets, per that district’s purpose and intent as set forth in DZC Sec. 7.2.2.
Rezoning Process
The outline below summarizes the key steps in a typical applicant-driven rezoning process. Some exceptions apply in certain situations. See the Denver Zoning Code for additional details.

1. Pre-Application Meeting
   A meeting between a prospective applicant and city staff to discuss the rezoning process and complete a preliminary review.

2. Informal Outreach
   The pre-applicant contacts surrounding property owners, Registered Neighborhood Organizations, and City Council members. This is recommended but not required.

3. Application Submittal
   The applicant completes and submits the application form, required supplements, fee, and outreach documentation. Staff check the application, and once it’s deemed a complete application, staff sends email and postcard public notification. The application is also posted to the city’s rezoning webpage.

4. City/Agency Review
   Staff reviews the application using the criteria in the Denver Zoning Code, and other applicable agencies review the application and request changes as needed. Once the application is ready, then it gets scheduled to go to Planning Board.

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What is Public Notification?
The Denver Zoning Code requires public notice for rezonings. This includes notification to property owners (via a postcard) and registered neighborhood organizations (via an email) within 200 feet of the property, as well as the At-Large and the District Council members (via email) and signs posted on the property. Postcard notification is only sent when the application is received and prior to the Planning Board public hearing. Posted signs are required prior to both the Planning Board and City Council public hearings.
Rezoning Process Continued

The applicant posts signage on the property about the rezoning request and upcoming public hearing 15 days prior to the hearing and staff sends email and postcard public notification. A staff report is created with a staff recommendation and sent to Planning Board along with the application and any written public comments received. Planning Board reviews the rezoning request and holds a public hearing, which includes a staff presentation of the application and opportunity for community members to speak regarding the application. After the public hearing, Planning Board deliberates on whether or not the application meets all the review criteria and votes to make a recommendation to City Council.

The application moves to the Land Use, Transportation, and Infrastructure (LUTI) committee, which typically consists of seven city council members. Staff typically send a courtesy (not required) email public notification prior to the meeting. The staff report and application is sent to the committee. During the meeting, staff presents the application and the committee deliberates and votes on whether or not the application is ready to move to the full City Council.

The applicant posts signage on the property about the rezoning request and upcoming public hearing 21 days prior to the hearing and staff sends email public notification. The staff report and application are sent to City Council along with any written public comments received. City Council reviews the rezoning request and holds a public hearing, which includes a staff presentation of the application and opportunity for community members to speak regarding the application. After the public hearing, City Council deliberates on whether or not the application meets all the review criteria and votes to either approve or deny the application.

The final mayoral signature and publication is required before the zoning change goes into effect.