

**SUBJECT:** Proposed text amendment for §1431-05 of the Cincinnati Zoning Code regarding the establishment of Interim Development Control (IDC) Overlay Districts.

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on a text amendment that would allow “additional documentation” language to be added to the IDC section of the Zoning Code in order to provide the flexibility needed to make IDC’s a more useful tool.

**PROPOSED TEXT AMENDMENT:**

**§ 1431-05. Establishment of IDC Overlay Districts.**

After receiving an affirmative recommendation from the City Planning Commission, Council may establish an IDC Overlay District on finding that:

- (a) **Proposed Amendments.** Map amendments to the Cincinnati Zoning Code have been proposed in a comprehensive plan, urban design or urban renewal plan or community plan approved by the City Planning Commission or other documentation approved by the City Planning Commission or zoning text amendments are being considered by the City Planning Commission. Other documentation that the Planning Commission may consider in determining the appropriateness of an IDC Overlay District may include a court decision, a court action in progress, an appeal before the Zoning Board of Appeals, a study requested by City Council, the Mayor or the City Manager, a planning or land use study in progress or a zoning map amendment recommended by the Planning Commission.
- (b) **Study and Review.** The proposed amendments may substantially affect permitted uses in the area of consideration and will require the study and review by the City Planning Commission, city administration and Council prior to adoption.
- (c) **Public Interest.** The protection of the public interest requires that interim development controls be imposed during the period of study and review by the City Planning Commission.

**JUSTIFICATION:**

On September 11, 2007 a Motion was submitted by Councilmember Roxanne Qualls to amend the IDC section of the Zoning Code to add the statement “or other documentation approved by the City Planning Commission”. The current Zoning Code was adopted by City Council in January 2004. The rewrite of the Zoning Code removed the language “or other documentation approved by the Planning Commission” because the IDC tool was too often being used indiscriminately to prevent development in neighborhoods. Removal of the phrase “or other documentation approved by the

Planning Commission” has rendered the IDC tool unusable since the adoption of the Zoning Code in 2004 because absent a plan approved by the Planning Commission that recommends specific zone changes, an IDC cannot be adopted.

Planning Staff requested that the “or other documentation approved by the Planning Commission” language be added back into the Zoning Code. The Law Department reviewed the proposed changes to determine if it might leave the City vulnerable to inverse condemnation “takings” claims. In July 2006, the City Solicitor advised Planning Staff that establishing an IDC without basing it upon prior approved plans, or some other documentation that rises to the level of an approved planning document, would not substantially advance legitimate City Planning interests.”

To ensure that the application of an IDC will not leave the City vulnerable to inverse condemnation “takings” claims, the “other documentation” could be specified in the Zoning Code. Such documentation would prevent IDC requests simply to block development projects. The following list provides several examples of other documentation that could rise to the level of an approved planning document:

1. A court decision
2. A court action in progress
3. An appeal before the Zoning Board of Appeals
4. A study requested by City Council, the Mayor or the City Manager
5. Planning or land use studies in progress
6. A recommendation of a zone change by the Planning Commission

On October 24, 2007 City Council directed staff to amend the Zoning Code to include the “other documentation” language in the IDC section.

**PUBLIC STAFF CONFERENCE:**

A public staff conference was not held since this amendment was Council directed.

**RECOMMENDATION:**

The Department of City Planning staff recommends that the City Planning Commission approve the requested text amendment.

**Respectfully Submitted By:**

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Margaret A. Wuerstle, AICP, Chief Planner  
Department of City Planning

**Approved:**

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Charles C. Graves, III  
Director, Department of City Planning

## **BY-LEAVE Amendment to item #20**

Honorable City Planning Commission  
Cincinnati, Ohio

February 1, 2008

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neighborhoods. Removal of the phrase “or other documentation approved by the Planning Commission” has rendered the IDC tool unusable since the adoption of the Zoning Code in 2004 because absent a plan approved by the Planning Commission that recommends specific zone changes, an IDC cannot be adopted.

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**PUBLIC STAFF CONFERENCE:**

A public staff conference was not held since this amendment was Council directed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommends that the City Planning Commission approve the requested text amendment.

**Respectfully Submitted By:**

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Margaret A. Wuerstle, AICP, Chief Planner  
Department of Community Development & Planning

**Approved:**

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Charles C. Graves, III  
Director, City Planning Department