

## Proposed Ordinance Changes

June 22, 2021

Repeal 10-7 Mixed Use Zone

Remove column "M" in 10-12-1

Replace current 10-10 with the following:

### **RESIDENTIAL PLANNED UNIT DEVELOPMENT ZONE**

#### SECTION:

- 10-10-1: Intent
- 10-10-2: Use Regulations
- 10-10-3: Special Provisions
- 10-10-4: Requirements
- 10-10-5: Open Space
- 10-10-6: In Lieu Substitutions for Open Space Requirements

#### **10-10-1: INTENT AND PURPOSE**

The purpose of a R-PUD zone is to encourage imaginative and efficient utilization of land, to develop a sense of community, and to ensure compatibility with the surrounding neighborhoods and environment. Applicants apply for the zoning designation to be applied, allowing them to receive the density outlined herein in exchange for public amenities. This is accomplished by providing greater flexibility in the location of buildings on the land, the creation and consolidation of open spaces, and the clustering of dwelling units. These provisions are intended to create more attractive and more desirable environments within River Heights City. R-PUD incorporates a development theme which includes the elements of usable open spaces, diversity of lot design, amenities, a well-planned circulation system, and attractive entrances as part of the design. The combination of all these elements is necessary for the development of a R-PUD. Because of the substantial public advantages of a planned unit development, it is the intent of this zone to allow development hereunder where tracts suitable in size, location and character for the uses and structures proposed are planned and developed as units for a unified and coordinated manner. In such circumstances, where municipal planning and private development may effectively proceed together, it is necessary and appropriate that there be requirements and regulations other than on a lot by lot or subdivision basis to provide flexibility and innovation in site planning and land use relationships while also ensuring substantial compliance with the intent, objectives and purposes of this title and the city's general plan.

#### **10-10-2: SPECIAL PROVISIONS**

- A. An R-PUD may be applied on properties designated as such in the River Heights City General Plan.
- B. Minimum development site: The minimum total area for an R-PUD shall be 5 acres unless otherwise approved by the City.
- C. Maximum density: The maximum density of an R-PUD Zone shall be 6 units per gross acre.
- D. The design of public streets within an R-PUD shall follow the applicable city standards for width of right of way and construction. All streets within an R-PUD, in a residential zone shall be public streets. (Exception would be private drive isle.)
- E. Within residential zones, R-PUDs should incorporate walking and biking trails and pathways for the use and enjoyment of residents. These trails and pathways may vary in width from five (5) to ten feet (10') depending on their intended use. Consideration shall be given for their connectivity or inclusion into the citywide network of trails identified in the city's general plan. Where appropriate, equal consideration for trails and pathways shall be given within residential zones.
- F. Individual private parking stalls and parking structures shall avoid direct access to public streets classified as collector in the River Heights transportation master plan. Driveways serving three (3) units or more may be allowed to access such streets, provided they are located a minimum of two hundred feet (200') from another driveway or public street, on a collector street, when measured from the centerline of the driveway to the centerline of another driveway or street.

#### **10-10-3: REGULATIONS**

The following buildings, structures and uses of land shall be permitted upon compliance with the requirements set forth in this title: Multiple-family dwellings (should not exceed four (4) units per structure), patio homes, single-family attached, single-family that are conventional dwellings. A minimum of 65% of all dwelling units in a R-PUD, must be single family detached. All buildings will be limited to two stories above grade.

#### **10-10-4: REQUIREMENTS**

- A. Preliminary Plat Required: All R-PUDs shall require a preliminary plat and site plan. The zoning designation shall be based upon the preliminary plat.
- B. R-PUDs must comply with requirements of River Heights Subdivision Ordinances.
- C. Site Plan required: Application shall be accompanied by architectural drawings and sketches outlining the general design and character of the proposed uses and the physical relationship of the uses: The use or uses, dimensions, sketch elevations, and General locations of proposed dwellings and other structures.
- D. Architectural Design Standards for multi-family dwellings: All new buildings must incorporate a defined architecture style. A recognized architectural style shall be one which is recognized by design professionals as having basis in classical, historical or academic architectural design styles. The following elements shall be incorporated into the design of each building:
  - 1. Primarily durable, materials including stucco, brick, fiber cement, decorative block or other materials as approved by City Council.
  - 2. For buildings over 1 story, vertical separation elements to differentiate levels. These may include Change of materials, dormers, cornices, or other elements,

as approved by City Council.

3. Architectural wall variation between units to differentiate dwellings. These may include, vertical articulation, variation of materials or other elements, as approved by City Council.
- E. Dimensions and locations of areas to be reserved and k for vehicular and pedestrian circulation, proposed parking, ingress, and egress. Proposed circulation pattern including private driveways, public and private streets, and pedestrian and bicycle paths.
- F. A planting plan showing proposed tree and shrubbery plantings shall be prepared for the entire site to be developed.
- G. A maintenance plan which defines the responsible parties for all open space areas and amenities shall be provided and incorporated into the development agreement. (See Section 10-10-5)
- H. Modifications and Conditions May be Imposed: The planning commission and city council may impose modifications and conditions in consideration of factors, such as size and location, street capacities of the area, ingress and egress to adjoining streets, internal traffic, signs and lighting, building bulk and location, including residential density, coverage, and open space characteristics as stated in River Heights Subdivision Ordinances.
- I. Applicants must start construction within one (1) year of the approval of the project and any necessary zoning district change, and complete construction, or approved stages thereof, within four (4) years from the date construction begins.
- J. The development must be planned as one complex land use rather than as an aggregation of individual and unrelated buildings and uses.
- K. Proposed R-PUD adjacent to existing single-family homes must place single family homes adjacent to the established single-family homes unless otherwise buffered by 100-foot width of open space including a landscaped Buffer as defined within this chapter.
- L. Playground: an area provided for children to play on. Each Playground must be designed for children twelve and younger. A playground must include features to appeal to children within the above age group including some of the following: slides, monkey bars, ladders, tunnels, climbers, bridges, ramps, platforms, etc. All playground equipment must be of commercial grade. Each playground must include a minimum of 6 features.

#### **10-10-5: OPEN SPACE**

- A. R-PUDs shall provide a minimum open area for residents and/or occupants of such development. Open space shall be land areas that are not occupied by buildings, structures, parking areas (including private driveways), streets or alleys. Said open space shall be devoted to landscaping, preservation of natural features, open pavilions, and recreational areas. Required "base" open space areas shall be contiguous, not a collection of remnants.
- B. The open space requirement for R-PUD zone will be 25% of gross acreage.
- C. The open space should be large enough for the use of all residents of the project or the general public. Such spaces, minimum of a half-acre, should include improvements such as playgrounds, pathways, pavilions, play courts, and areas of significant native vegetation. Specific improvements shall be approved by the City
- D. Areas with natural features worthy of preservation, which are not buildable, such

as canyons or slopes, ridgelines, wetlands, stream or creek corridors, utility corridors, wildlife habitat, geologically sensitive areas, and significant views and vistas.

- E. Open Space Amenities: An R-PUD with 50-100 dwelling units must provide a playground. An R-PUD with greater than 100 dwelling units must provide a playground and pavilion. Alternate amenities of equal value and utility may be provided, as approved by the City.
- F. Playground Definition: an area provided for children to play on. Each Playground must be designed for children twelve and younger. A playground must include features to appeal to children within the above age group including some of the following: slides, monkey bars, ladders, tunnels, climbers, bridges, ramps, platforms, etc. All playground equipment must be of commercial grade. Each playground must include a minimum of 6 features.
- G. Type of Ownership Allowed for Open Space:
  - 1. General:
    - a. Open space in the R-PUD zone shall remain undivided and may be owned and managed by a homeowners' association, the city, or a recognized land trust or conservancy. A narrative describing ownership, use and maintenance responsibilities shall be submitted for all common and public improvements, utilities and open space within undivided lands. If, at any time, the ownership of open space is changed to another form of ownership allowed herein, the ownership change must be approved by the City and the City must be provided the first right to accept or acquire the open space.
    - b. The ownership of all or any portion of open space shall not change by transfer, deeding, quitclaim, purchase, or by any other method, without the review and approval by the City. Leasing, renting or use by any entity or person other than the homeowners' association of any portion of the open space shall be reviewed and approved by the City.
  - 2. Ownership Standards: Open space within a development shall be owned, administered and maintained by any of the following methods, either individually or in combination, and subject to approval by the city.
    - a. Offer of Dedication: The city shall have the first and last offer of dedication of undivided lands in the event said land is to be conveyed. Dedication shall take the form of a fee simple ownership. The city may, but shall not be required to, accept undivided lands; provided, that:
      - (1) Such land is accessible to the residents of the city;
      - (2) There is no cost of acquisition other than any cost incidental to the transfer of ownership such as title insurance; and
      - (3) The city agrees to and has access to maintain such lands. Where the city accepts dedication of open space (undivided lands) that contain improvements, the city may require the posting of financial security to ensure satisfactory functioning and structural integrity of improvements for a term not to exceed eighteen (18) months from the date of acceptance of dedication. The amount of financial security shall not exceed fifteen percent (15%) of the actual cost of installation of said improvements.
    - b. Homeowners' Association (HOA): The open space (undivided lands) and associated facilities may be held in common ownership by a homeowners' association. The HOA shall be formed and operated under the following provisions:

- (1) The developer shall provide covenants, conditions and restrictions (CC&Rs) of the association, including its bylaws, articles of incorporation and methods for maintaining the open space (undivided lands). The CC&Rs shall be reviewed and approved in content and form by the City. Acceptance of the CC&Rs by the City will be contingent upon meeting the intent and conditions required by this code. The CC&Rs will be approved by the City prior to filing the final plat. The CC&Rs will be recorded by the City attorney at the county recorder's office at the time of the filing of the final plat.
- (2) The association shall be organized by the developer and be operated with financial subsidization by the developer, before the sale of any lots within the development.
- (3) Membership in the association is automatic (mandatory) for all purchasers of commercial spaces, residences or lots therein and their successors. The conditions and timing of transferring control of the association from developer to homeowners shall be identified in the CC&Rs.
- (4) The association shall be responsible for maintenance of insurance and taxes on undivided lands, enforceable by liens placed by the city.
- (5) The members of the association shall share equitably the costs of maintaining and developing such open space (undivided lands). Fees shall be determined by the association and assessed and deposited in an escrow account. Shares shall be defined within the association bylaws.
- (6) The developer of the subdivision shall endow the newly formed homeowners' association with funds equivalent to ten percent (10%) of the development cost for all common improvements which shall be used by the HOA to operate, maintain and insure the HOA for the first year that the association begins to operate independently of the developer. Funds shall be deposited in the checking account in the name of the HOA within ten (10) days after the day which the HOA begins to operate independently of the developer.
- (7) In the event of a proposed transfer, within the methods herein permitted, of open space (undivided lands) by the homeowners' association, or of the assumption of maintenance of the open space (undivided lands) by the city, notice of such action shall be given to all property owners within the development.
- (8) All improvements to the open space (undivided lands) held in common or intended to be held in common by the HOA shall be installed, completed and accepted prior to the beginning of the second phase of construction, or if the project is not phased, prior to sale of all lots. If phasing of the improvements to the open space (undivided lands) is required by the developer, all incomplete improvements for the open space (undivided lands) shall be secured through a bond posted by the developer.
- (9) The association shall have or hire adequate staff to administer common facilities and properly and continually maintain the open space (undivided lands).

- (10) The homeowners' association may lease undivided lands to any other qualified person, or corporation, for operation and maintenance of open space (undivided lands) by lease agreement, which shall provide:
  - (A) The residents of the development shall at all times have access to the open space (undivided lands) contained therein;
  - (B) The open space (undivided lands) to be leased shall be maintained for the purposes set forth in this title; and
  - (C) The operation of facilities within the open space (undivided lands) may be for the benefit of the residents only, or may be open to the residents of the city, at the election of the developer and/or homeowners' association, as the case may be;
  - (D) The lease shall be subject to the approval of the City and any transfer or assignment of the lease shall be further subject to the approval of the city. Lease agreements shall be recorded with the county recorder within thirty (30) days of the execution and a copy of the recorded lease shall be filed with the City.
- c. Conservation Easement: A conservation easement shall be established to provide a permanent preservation of the open space (undivided lands). The easement shall be indicated on the recorded plat and state the ownership of the easement and reference the maintenance agreement also recorded with the final plat stating the standards of upkeep as defined in these subdivision regulations.
- d. Transfer of Easements to Private Conservation Organization: With the recommendation of the planning commission and the permission of the City council, an owner may transfer easements or ownership to a private nonprofit organization, among whose purposes it is to conserve open space (undivided lands); provided, that:
  - (1) The organization is acceptable to the city, and is a bona fide conservation organization with perpetual existence;
  - (2) The conveyance contains appropriate provision for proper reverter or retransfer in the event the organization becomes unwilling or unable to continue carrying out its functions; and
  - (3) A maintenance agreement acceptable to the planning commission and the city council is entered into by the developer and the organization.
3. Maintenance Standards:
  - a. The following standards shall be fulfilled and shall be recorded on the face of the final plat: *River Heights City shall have the right, but not the duty, to require, and if necessary, perform, at the organization's expense, landscaping, maintenance and snow removal, as applicable, within the open space areas if the organization fails adequately to perform such. The city may take this action when asked to take over improvements or maintenance tasks by an organization. The city council may also take such action when it determines the need based on a historical pattern of lack of care and maintenance. In the event River Heights City exercises this right, the city shall be entitled to recover any associated costs and attorney fees. This notation shall not be amended or deleted without the approval of River Heights City.*
  - b. The owner of the open space (undivided lands) shall be responsible for maintenance and the raising of all monies required for operations,

maintenance or physical improvements to the open space (undivided lands) through annual dues, special assessments, etc. The maintenance organization shall be authorized, under its bylaws, to place liens on the property of residents who fall delinquent in payment of such dues, assessments, etc.

- c. In the event that the maintenance organization, or any successor organization, shall, at any time after establishment of a development containing open space (undivided lands), fail to maintain the open space (undivided lands) in reasonable order and condition in accordance with the development plan, the city may serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the open space (undivided lands) in reasonable condition.
- d. Failure to adequately maintain the open space (undivided lands) in reasonable order and condition constitutes a violation of this title. The city is hereby authorized to give notice, by personal delivery or by United States postal service, to the owner or occupant, as the case may be, of any violation, directing the owner to remedy the same within twenty (20) days. Further, the city shall be authorized to assume maintenance of the open space (undivided lands) in such a manner as it deems appropriate.
- e. Should any bill or bills for maintenance of the open space (undivided lands) by the city be unpaid by January 1 of each year, a lien shall be filed against the premises in the same manner as other municipal claims. A late fee of fifteen percent (15%) annually shall be added to such bills, and the city shall be entitled to recover any costs and attorney fees incurred collecting or recovering any such mounts due to the city.
- f. Access by Public upon Completion of Improvements within Undivided Lands: The public shall have access, when mutually agreed by all parties, including the city. Lots designed with the rear facing open spaces shall be accessible at all times and all locations. At no time shall public access be denied unless unsafe conditions exist or unless approved by the city. Public access within undivided lands shall be allowed only where identified and allowed within the approval documents.

#### **10-10-6: IN LIEU SUBSTITUTIONS FOR OPEN SPACE REQUIREMENTS**

- A. Purpose: The city finds that land in other locations may be substituted for open space requirements where it is advantageous to preserve important land. For this purpose, the City may allow a developer to develop land required for open space if equivalent or greater land is identified and situated in another location and acceptable to the city (referred to as "in lieu substitutions" or "in lieu open space substitutions" hereafter).
- B. Approval Required Prior to Recordation: Recordation of a final plat for a subdivision utilizing an approved density bonus and an in lieu substitution may not occur until in lieu substitutions are approved, finalized and effective.
- C. Hazardous Lands Not Acceptable: An application for a density bonus and for an in lieu substitution may be approved, for open space land in another location, only when such proposed in lieu substitution of open space land is absent hazards to development such as, but not limited to, steep slopes, geologic hazards, unstable soils, floodplains, wetlands, riparian areas or water source protection areas. In no case shall such hazardous lands be used

for the original development density or the bonus density. Where agricultural land is being substituted, equally productive or more productive agricultural land must be substituted.

- D. Use of Land Limited: For the purpose of in lieu substitutions, use of the in lieu open space land shall be limited to the following:
  - 1. Recreation active use: play fields, parks, trails, playgrounds, related parking;
  - 2. Recreation passive use: trails, wild lands, natural landscapes;
  - 3. Conservation easements held by a recognized conservation organization or other type of ownership as permitted by this code; and/or
  - 4. Visual amenities or development setbacks.
- E. Equal Value Required: In lieu substitutions of land intended to fulfill the requirements for open space may be allowed when it is factually established, by a qualified land appraiser that the substituted land is equal in land area and/or at least equal in value to land compared with the original development property. The city must agree to and approve the land areas to be appraised, both from the original site and the proposed substituted site, prior to the appraisal. The appraiser will be selected by and contract with the city. The fees for the appraisals will be reimbursed to the city at cost by the developer.
- F. Variation in Use or Substitution Not Permitted: Any land which has been dedicated, set aside, platted or otherwise approved as open space may not be substituted or used.
- G. Types of Open Space Substitutions Available: The following options are available to developers to satisfy approved in lieu substitutions for density bonus and open space requirements:
  - 1. Cash in Lieu: The city may, at its sole discretion, accept cash in lieu of open space or amenity requirements where such funds can be more effectively used to acquire land or amenities at a more appropriate or significant location consistent with the general plan and the parks and recreation master plan. Cash in lieu payments shall not be accepted until a qualified appraisal is provided by the city, at the cost of the applicant, identifying the value of the original land for which the in lieu substitution is proposed, based on the use that will be permitted if the open space requirement is removed, and for which cash in lieu shall be offered. The city shall have the option to use in lieu funds for uses for park improvements.
  - 2. Land in Lieu: The city may, at its sole discretion, accept land in lieu of open space requirements under the following conditions:
    - a. The proposed land to be substituted is consistent with the General plan and the parks and recreation master plan;
    - b. Other land is acceptable to and approved by the city as open space in a location determined by the city to be a substitute site;
    - c. Acceptable and approved land is dedicated to the city with unencumbered title; and
    - d. Such in lieu substitution for open space is retained in use and ownership consistent with other acceptable forms of open space ownership in this chapter.