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STAFF REPORT BOARD MEETING DATE: March 24, 2015

DATE: February 23, 2015

TO: Board of County Commissioners

FROM: Bob Webb, Planning Manager, Planning and Development Division
Community Services Department, 328-3623, bwebb@washoecounty.us

THROUGH: William H. Whitney, Division Director, Planning and Development
Community Services Department, 328-3617, bwhitney@washoecounty.us

SUBJECT: Introduction and first reading of an ordinance amending the Washoe County Code at Chapter 110 (Development Code) at Article 821, *Amendment of Regulatory Zone*, to add a new Section 110.821.02, *Definitions*; to amend Section 110.821.05, *Requirements for Application*, to correct references to the Director and Division and to add a provision for pre-application meetings; Section 110.821.10, *Supplemental Guidelines, Standards and Criteria*, to correct references to the Director; Section 110.821.15, *Review Procedures*, to clarify notice for the public hearing and procedures for concurrent application processing, to provide for adoption, denial and no action on the amendment by the Commission, and to remove findings for a denial; Section 110.821.20, *Notice*, to reference NRS for noticing and to add provisions for notice to GIDs and military installations; Section 110.821.25, *Appeal of Denial*, and Section 110.821.30, *Action by Board of County Commissioners on Appeal*, to amend procedures for Board action on amendments to be consistent with other Development Code provisions; Section 110.821.35, *Written Record*, to provide provisions for Board findings when the Commission makes no findings; Section 110.821.45, *Modification of Regulatory Zone Amendment*, and Section 110.821.50, *Moratorium*, for minor grammar changes; and, Section 110.821.60, *Minor Amendment of a Regulatory Zone map*, to modify procedures for Board Action on minor amendments to be consistent with other Development Code provisions and to define the content of the Board's adopting resolution. Recommendations include other matters properly relating thereto.

And, if supported, set the public hearing for second reading and possible adoption of the Ordinance for April 14, 2015, at 6:00 p.m.

(All Commission Districts.)

AGENDA ITEM # 18

SUMMARY

Introduction and first reading of an ordinance amending Washoe County Code (WCC) Chapter 110 (Development Code) at Article 821, *Amendment of Regulatory Zone*, to clarify actions and findings by the Washoe County Planning Commission and the Washoe County Board of County Commissioners on such amendments, to include minor amendments of Regulatory Zone maps. Set the public hearing for second reading and possible adoption of the ordinance for April 14, 2015, at 6:00 p.m.

Washoe County Strategic Objective supported by this item: Economic development and diversification.

PREVIOUS BOARD ACTION

The Washoe County Planning Commission initiated DCA 14-007, changes to Article 821, *Amendment of Regulatory Zone*, on April 1, 2014 by Resolution Number 14-11.

The Washoe County Planning Commission recommended approval of DCA 14-007 on February 3, 2015 by Resolution Number 15-02 (see Attachment A).

BACKGROUND

Article 821, *Amendment of Regulatory Zone*, currently requires findings for both the recommendation of approval of and the denial of a proposed regulatory zone amendment (WCC Section 110.821.15). Applying the findings for a denial of a proposed regulatory zone amendment have been problematic, particularly since the findings are counter intuitive to the process used to apply findings for all other discretionary actions within the Development Code. Findings for the other discretionary actions are only provided for an approval of the action. The Development Code also provides for the total number of findings which must be made in order for the action to be approved. If that total number of findings cannot be made, then the action must be denied.

The proposed amendments would remove the denial findings for regulatory zone amendment applications, and would further stipulate that all of the six findings must be made in order to approve the amendment. The seventh finding, effect on a military installation, would only need to be made if a military installation is required to be noticed about the application (noticing and distance requirements are contained in WCC Section 110.821.20).

The current Development Code does not provide direction on the sequence and approval of concurrent Master Plan and Regulatory Zone amendment requests. The Development Code does allow the concurrent processing of these amendments. However, a Regulatory Zone amendment can only be finally approved once the concurrent Master Plan amendments are adopted by the Washoe County Board of County Commissioners (BCC) and the plan subsequently is found to be in conformance with the appropriate Regional Plan. The proposed amendments will clearly outline this sequence of approvals for both the Planning Commission (PC) and the BCC, and also enable concurrent processing of

Regulatory Zone amendments with other types of discretionary permit applications (e.g., a Special Use Permit application).

The current Development Code is silent on the three kinds of action that the PC may take on a Regulatory Zone amendment. The three kinds of action include a recommendation of adoption to the BCC, a denial, or no action. A no action could occur if no motion is made, if all motions die for lack of a second, or if a tie vote occurs and the applicant does not request a postponement until the next PC meeting. The proposed amendments will provide appropriate regulations on the three kinds of action.

The proposed amendments will also add an additional criterion for the requirements of a minor amendment of a Regulatory Zone map. That new criterion is for Regulatory Zone amendments required when properties are being included or removed from a Sphere of Influence as adopted in the Truckee Meadows Regional Plan.

Additionally, in response to a change in the law, the ordinance clarifies voting requirements for approvals of zoning amendments by the BCC and by the PC. Under NRS 241.0355, a vote of a simple majority of the BCC's full membership is required to take action on a regulatory zone amendment. However, the PC can take action based on the vote of a simple majority of those present at the meeting. Accordingly, WCC Sections 110.821.30(i), 110.821.60(e)(3), and 110.821.50(i) are changed to require a simple majority vote of the entire membership of the BCC to take action, and Sections 110.821.15(c) and 110.821.50(d) are changed to reflect that the PC can take action on a simple majority vote of those present at the hearing.

Finally, the proposed amendments will provide for the following consistency and code "clean-up" matters:

1. Provide for definitions of terms used within the Article.
2. Reflect the current organization of the Planning and Development Division, Community Services Department.
3. Encourage pre-application meetings.
4. Establish that a simple majority vote of the PC's membership is required for a recommendation of approval or for a denial.
5. Add general improvement districts and military installations to the noticing requirements.
6. Stipulate that appeals are heard by the BCC following the procedures established in WCC Section 110.912.20.
7. Establish how written notice of the BCC's action is to be prepared, by whom, and that such written notice must be provided to the applicant. Additionally, stipulate that the action (written notice) is final for the purpose of judicial review.
8. Require resolutions of the BCC's actions for Regulatory Zone amendments and minor amendments of Regulatory Zone maps.
9. Establish that BCC public hearings on minor amendments of Regulatory Zone maps follow the provisions of WCC Section 110.821.20.

WCC Section 110.818.35 requires the BCC to affirm, modify or reject the findings of fact made by the PC during the BCC's final action (i.e., adoption of the ordinance) of any

Development Code amendment. The BCC may also add any other findings of fact that they deem to be relevant as part of their final action. The four findings of fact made by the PC during their recommendation for approval of DCA 14-007 are included within Resolution 15-02 (Attachment A). Those findings of fact, and staff's comments on those findings as contained in the PC staff report for the February 3, 2015 meeting, are included below:

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan.

Staff comment: Table 110.106.05.1 in Article 106, Master Plan Categories and Regulatory Zone, establishes the regulatory zones allowed within each Master Plan category. Regulatory zone amendment requests must follow this table, so that adopted amendments are in conformance with the Washoe County Master Plan.

2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code.

Staff comment: Part of the purpose of the Development Code is to provide due process rights afforded by the constitution, state statutes, and the County Code. The proposed amendments establish and refine a process for requesting changes to an adopted regulatory zone. The proposed changes are considered in the context of the overlying Master Plan category, and further evaluated for any potential impacts to the public health, safety and/or welfare of the surrounding property owners and the community at large. Therefore, this amendment strengthens both the purpose of the Development Code and provides a method to evaluate amendment requests in the context of the public's health, safety and welfare.

3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones.

Staff comment: Planning Commission members and planning staff have struggled over the past years with the findings for denial of a regulatory zone amendment request. Several PC members commented that the denial findings are not logical, in that if a member believes they cannot make a finding for approval then it follows that they must recommend denial. Planning staff, particularly legal counsel for the Commission, agree and subsequently began efforts to amend Article 821 to remove the denial findings. The amendments also incorporate changes to the Division's organization, which happened after this Article was last amended in 2010. The amendment itself does not provide for more desirable land uses within regulatory zones, as that analysis occurs specific to each amendment request. The amendment does, however, establish the processes and procedures

by which the PC can determine if individual amendment requests provide for more desirable land uses.

4. **No Adverse Affects.** The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

Staff comment: The amendments relate to process and procedures for regulatory zone amendment requests and do not directly affect the policies and action programs of the Conservation or Population Elements of the Washoe County Master Plan. The amendment does, however, establish the processes and procedures by which the PC can determine if individual amendment requests affect the implementation of either Element.

FISCAL IMPACT

No fiscal impacts are anticipated.

RECOMMENDATION

It is recommended that the Board of County Commissioners introduce and conduct a first reading of an ordinance amending the Washoe County Code at Chapter 110 (Development Code) at Article 821, *Amendment of Regulatory Zone*, to clarify actions and findings by the Washoe County Planning Commission and the Washoe County Board of County Commissioners on such amendments, to include minor amendments of Regulatory Zone maps.

It is further recommended that the Board set the public hearing for second reading and possible adoption of the ordinance for April 14, 2015, at 6:00 p.m.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

“Move to introduce Bill Number (insert bill number as provided by the County Clerk) and to set the public hearing and second reading of the Ordinance for possible adoption during the meeting of April 14, 2015, at 6:00 p.m.”

- Attachment: A. Planning Commission Resolution 15-02
B. Working copy, DCA 14-007 (WCC Chapter 110 amendments)