

Community Planning and Development Zoning Administration Performance Audit

October 2015

Office of the Auditor
Audit Services Division
City and County of Denver



Timothy M. O'Brien, CPA
Auditor

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Report number: **A2015-008**



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October 15, 2015

Mr. Brad Buchanan, Executive Director
Department of Community Planning and Development
City and County of Denver

Dear: Mr. Buchanan:

Attached is the Auditor's Office Audit Services Division's report of their audit of Community Planning and Development Zoning Administration. The purpose of the audit was to examine the impact of Community Planning and Development administering two zoning codes to regulate planning and development in the City and County of Denver. My team also assessed the functional challenges associated with maintaining two administrative systems for Community Planning and Development's planning, regulating, permitting, and inspection operations, including staff training and citizen and stakeholder challenges.

Despite the Department's efforts, the City lacks a consistent approach to zoning. Although Community Planning and Development would like to bring all parcels of land under one code, the Department has not developed a comprehensive strategy for doing so. Should the Department wish to move forward with adopting one zoning code for the City and County of Denver, it is my hope that it do so by presenting a solid business case to the Denver City Council and the citizens of Denver that shows that consolidation is in the best interest of both the City and the citizens.

If you have any questions, please call Kip Memmott, Director of Audit Services, at 720-913-5000.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. O'Brien".

Timothy M. O'Brien, CPA
Auditor

TMO/cw

cc: Honorable Michael Hancock, Mayor
Honorable Members of City Council
Members of Audit Committee
Ms. Cary Kennedy, Deputy Mayor, Chief Financial Officer
Ms. Janice Sinden, Chief of Staff
Mr. David P. Edinger, Chief Performance Officer
Ms. Beth Machann, Controller

Mr. Scott Martinez, City Attorney
Ms. Janna Young, City Council Executive Staff Director
Mr. L. Michael Henry, Executive Director, Board of Ethics



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Auditor

AUDITOR'S REPORT

We have completed an audit of Community Planning and Development Zoning Administration. The purpose of the audit was to assess the efficacy of the Department of Community Planning and Development (CPD) administering two concurrent zoning codes to regulate planning and development activities within the City and County of Denver. The audit also assessed the functional challenges associated with maintaining two administrative systems for CPD's planning, regulating, permitting, and inspection operations, including staff training and citizen and stakeholder challenges.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, *General Powers and Duties of Auditor*, and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit found that the City lacks consistent zoning by administering two concurrent zoning codes. However, CPD has not performed the necessary analysis to identify and correct deficiencies with the City's current zoning process. The audit recommends that the Department take several actions to address exiting issues with the current City zoning process.

We extend our appreciation to Brad Buchanan, Executive Director of CPD, Evelyn Baker, Deputy Director of CPD, and the additional CPD personnel who assisted and cooperated with us during the audit.

Audit Services Division

A handwritten signature in black ink, appearing to read "K. Memmott".

Kip Memmott, MA, CGAP, CRMA
Director of Audit Services

City and County of Denver – Office of the Auditor
Audit Services Division

REPORT HIGHLIGHTS



Community Planning and Development Zoning Administration October 2015

The audit assessed the City and County of Denver's two zoning codes as administered by the Department of Community Planning and Development.

Background

Zoning is a municipal authority used to regulate land use and development. Denver adopted its first zoning code in 1925. As land use evolved to reflect the increasing use of the automobile, Denver's zoning needs evolved as well. The City revised its zoning code accordingly. Chapter 59 of the Denver Revised Municipal Code was adopted in 1956, and an official map showing the various zoning districts in the City was created to reflect the elements of the code. Chapter 59 remained the City's official zoning code until yet another code was adopted in 2010, called the Denver Zoning Code. Currently, Denver administers two zoning codes concurrently.

Purpose

The purpose of the audit was to examine the impact from Community Planning and Development (CPD) administering two zoning codes to regulate the planning and development of the City and County of Denver. The audit also assessed the functional challenges associated with maintaining two administrative systems for CPD's planning, regulating, permitting, and inspection operations, including staff training and citizen and stakeholder challenges.

Highlights

The existence of two zoning codes in the City and County of Denver is challenging for City administrators and external stakeholders alike. According to the Department of Community Planning and Development (CPD), these challenges include difficulties associated with the implementation of the City's long-term goals and staff training, as well as citizen inequity. Although we were able to validate some of the challenges that CPD identified, such as those related to citizen equity, we were unable to verify others due to insufficient data and information. During the course of our audit work we also examined certain zoning administration activities to identify potential costs, benefits, and trade-offs resulting from the administration of two zoning codes. Although we were unable to verify a direct relationship in all instances between the trends that we observed and improved administrative efficiency, there is some indication that the New Code may be more efficient to administer.

CPD believes that converting to a single zoning code could help reach established goals and address inequity and inefficiency. However, CPD has not developed a comprehensive strategy for undertaking this conversion. Specifically, CPD has not clearly outlined the costs and benefits of the conversion, analyzed associated risk, or established a framework for evaluating the success of a conversion. In addition to establishing a strong business case for the funds required to move to one code, this type of analysis could also help CPD evaluate and improve its zoning administration operations overall.

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INTRODUCTION & BACKGROUND

Principles of Zoning for Land Use

Zoning is a municipal authority used to regulate land use and development. Zoning activities divide municipalities into separate districts or zones based on existing or desired land use patterns for residential, commercial, or industrial use. Zones are distinct from one another, with land use in each zone being reasonably uniform. There is considerable variation among different zoning approaches, or the regulatory frameworks for land use controls. Some zoning is focused on the regulation of structural design, appearance, and relationships to other structures and uses. Others are based on existing use patterns or designed to encourage development that meets a municipality's established goals.

Municipalities use zoning ordinances—also referred to as *zoning codes*—to regulate land use and development within established zone districts. Some zoning codes are quite detailed, placing restrictions on various aspects of land use and development such as lot size, building dimensions, the distance a structure may be set back from the streets, placement of utilities, and parking. Zoning codes may also include provisions to preserve areas of historic or cultural significance.

Denver's Zoning Code

Denver adopted its first zoning code in 1925. As land use evolved to reflect the increasing use of the automobile, Denver's zoning needs evolved as well. In 1956, the City revised its zoning code accordingly. Chapter 59 of the Denver Revised Municipal Code was adopted in 1956, and an official map showing the various zoning districts in the City was created to reflect the elements of the code.¹ Chapter 59 remained the City's official zoning code until yet another code was adopted in 2010, formally referred to as the *Denver Zoning Code*. Denver administers both zoning codes concurrently: Former Chapter 59, commonly referred to as the *Old Zoning Code*, and the Denver Zoning Code, commonly referred to as the *New Zoning Code*. See Appendix A for additional information on the City's zoning codes.

When the New Zoning Code was adopted in 2010, it was determined that approximately 20 percent of City land would continue to be regulated under the Old Zoning Code. The City excluded certain parcels from regulation under the New Zoning Code due to unique or custom zoning conditions that made it difficult to align them with the context-based elements of the new code. For example, the City excluded Planned Unit Developments (PUDs) from regulation under the New Zoning Code. A PUD is a unique zone district that

¹ The Official Zoning Map of the City and County of Denver, also referred to as the "Official Map," is maintained by the Department of Community Planning and Development and published by Technology Services' Geographic Information Systems Office. The Official Map delineates the boundaries of the City's Zone Districts and is marked consistent with the zoning code. Amendments to the Official Map are maintained and made available to the public by the Department of Community Planning and Development.

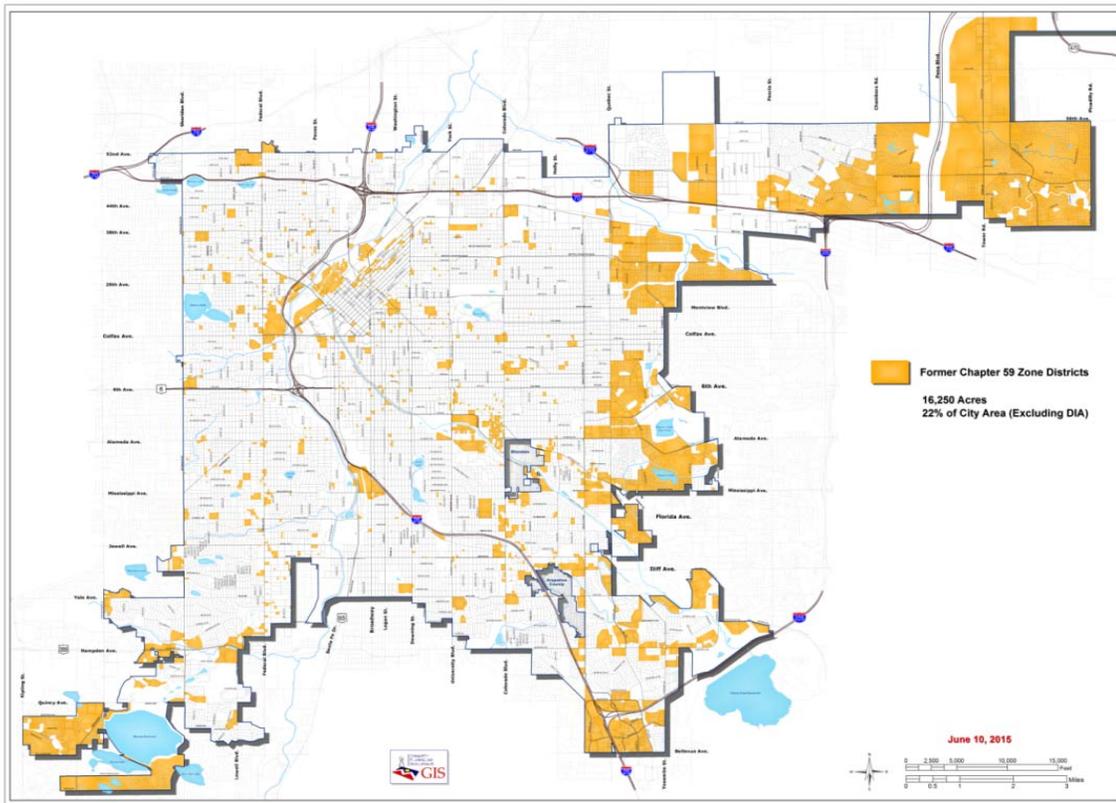
provides form, use, parking, and other standards tailored to a particular site.² As of August 2015, 1,246 zones, including 422 PUDs, remained designated under the Old Zoning Code. Other areas with custom zoning that are regulated under the Old Zoning Code include those with:

- **Planned Building Groups**—Construction of two or more structures on a single zone lot, with approved site plans that create unique standards for specific development
- **Waivers and Conditions**—Lands assigned to a zone district under the Old Zoning Code, but are excluded from certain development and land use requirements, or may be subject to terms and conditions that are not specifically outlined in the Old Zoning Code

According to CPD officials, PUDs and lands with waivers and conditions are often the result of thoughtful negotiations with neighborhoods. When the New Zoning Code was adopted in 2010, the City opted not to reverse the results of its negotiations through the legislative process. See Figure 1 for a map of zone districts that are regulated under the Old Zoning Code.

² According to the American Planning Association, PUDs may vary in form, ranging from modest residential developments where housing units are clustered and open space is provided, to mixed use master planned communities that cover thousands of acres.

Figure 1: Map of Zone Districts Regulated Under the Old Zoning Code, City and County of Denver



Source: Department of Community Planning and Development.

Department of Community Planning and Development

The authority to administer and enforce Denver's zoning code currently resides in the Department of Community Planning and Development (CPD).³ CPD is an executive department, established by City Charter that is primarily responsible for planning and regulating land use and development within the City and County of Denver.⁴ As shown in Figure 2, CPD consists of three divisions: the Office of the Manager, Planning Services, and Development Services.

³ Throughout this report references to "zoning code" generally refer to both Former Chapter 59 of the Denver Revised Municipal Code and the Denver Zoning Code, unless otherwise specified.

⁴ CPD powers and duties, including those related to zoning administration are outlined in the City Charter. See Title I, Home Rule, Subtitle B, Charter, Article II, Mayor and Executive Departments, Part 13, Community Planning and Development, §2.13.3.

Figure 2: Community Planning and Development Organizational Structure



Source: Department of Community Planning and Development.

Development Services was established as a division of CPD to coordinate development-related services from concept to Certificate of Occupancy for all residential and commercial construction in the City.^{5,6} In 2015, Development Services received approximately \$14.6 million in appropriations, which included funding for 152 full time equivalent positions. In recent years, Denver has been growing at a rate that has not been observed since the 1940s. Since 2010, the City’s population has increased by almost 11 percent, with an estimated population of over 660,000 residents.⁷ The demand for development-related services has also increased in recent years. For example, the number of building permits increased by about 32 percent between 2011 and 2014. The City estimates that permit valuation in 2014 was \$2.2 billion, and is estimated to increase to \$2.9 billion in 2015.⁸ Furthermore, the number of building inspections and neighborhood inspections also increased by approximately 18 percent during the same time period. Neighborhood inspections increased slightly at 3 percent.⁹ See Table 1 for a breakdown of the number of permits issued and inspections conducted by CPD from 2011 through 2014.

⁵ Executive Order No. 137, “Development Services: A Division of Community Planning and Development Updated Organizational Structure, Powers and Duties,” established Development Services as a division within CPD to manage, coordinate and align regulatory powers and functions related to the development and use of private property in the City and County of Denver.

⁶ A Certificate of Occupancy is a document issued by the City that formally confirms that a building is in compliance with applicable building codes and other laws, and indicates that a building is in a condition that is suitable for habitation or other intended use.

⁷ United States Census Bureau.

⁸ Mayor’s Proposed 2016 Budget. Permit Valuation represents the annual dollar valuation of building permits issued. Building permits are issued to authorize construction of residential and commercial units within the City. Permit valuation represents the sum of the estimated valuation of all permitted construction and is a key metric because it is a strength indicator of Denver’s built environment.

⁹ Mayor’s 2015 Budget and Mayor’s Proposed 2016 Budget.

Table 1: Permits and Inspections in the City and County of Denver, 2011 through 2014

	2011	2012	2013	2014	Percent change from 2011 to 2014
Number of building permits issued	51,549	55,463	55,252	67,818	31.6
Inspections					
Number of building inspections conducted	187,116	187,198	203,388	219,965	17.6
Number of neighborhood inspections conducted	111,116	111,332	133,361	114,059	2.6

Source: Auditor's Office analysis of Mayor's 2015 Budget and Mayor's Proposed 2016 Budget data.

Note: The percent change figures in the table are rounded, but were calculated using the exact figures reported in the Mayor's 2015 Budget and Mayor's Proposed 2016 Budget and as shown in the table.

The City's Zoning Administrator, planners, engineers, inspectors, and other personnel responsible for enforcing the zoning code reside in Development Services. Key administrative activities related to Development Services and zoning administration include ensuring compliance with property and use provisions in the City's zoning code by reviewing building and site plans, issuing zoning permits, and performing property inspections.

Planning Services is responsible for preparing plans and regulatory tools that guide future growth, enhancement, and preservation of the City. Specifically, the division is responsible for developing long-range plans that reflect the collective community vision for the City's future. Planning Services also develops regulatory tools that advance the City's adoption of these plans and serves as a link between the City's long-term goals and development. See Table 2 for a description of the City's key planning efforts.

Table 2: Key Planning Efforts for the City and County of Denver

Plan	Description
Denver Comprehensive Plan 2000 – A Vision for Denver and its People	Updated from a previous comprehensive plan completed in 1989, Denver Comprehensive Plan 2000 establishes a vision and outlines goals to make Denver a livable city for its people, now and in the future.
Blueprint Denver	Adopted by the City to supplement Comprehensive Plan 2000. Blueprint Denver serves as the first step in implementing and making concrete the vision outlined in Comprehensive Plan 2000.
Small Area Plans	Small Area Plans help align planning for neighborhoods, corridors, and districts with goals outlined in broader planning efforts such as Comprehensive 2000 and Blueprint Denver.

Source: City and County of Denver, Blueprint Denver (2002).

Note: In addition to Blueprint Denver, there are other Citywide planning efforts that help the City achieve goals that are outlined in Comprehensive Plan 2000. These plans include the Bicycle Master Plan (2001), Pedestrian Master Plan (2005), the Game Plan (2005), Gulch Master Plan (2010), and the Housing Plan (2015 - 2019).

Also, as previously discussed, the zoning code and the official map evolve over time, requiring periodic updates through text amendments or map amendments. Furthermore, slight deviations from the code as written may be warranted for practical purposes and can be accomplished through administrative adjustments. Planning Services staff are responsible for administering processes and procedures related to text and map amendments, while the Zoning Administrator and other Development Services staff are responsible for administrative adjustments.

Text Amendment—A text amendment is a change to the text of the zoning code to address a range of issues, including to correct unintentional errors in the text of the code or to simplify language to make provisions more clear and easier to understand. Also, text amendments may change policy in response to changing conditions, including those for new or emerging land uses such as urban agriculture or marijuana dispensation. Applications for text amendments must be filed in writing with CPD, and may be initiated by the City Council, the manager of any City department or agency, or the manager of CPD on the manager’s initiative or upon the request of private parties.

Following the submission of a text amendment application, CPD reviews the application, notifies public or private entities that might be affected by the proposed text amendment, and makes recommendations to the Planning Board regarding the proposed change. The Planning Board holds a public hearing to review the proposed text amendment, related comments, and CPD’s recommendations. The Board also assesses the proposed amendment against criteria specified in the zoning code, including consistency with the City’s adopted plans. Following the Planning Board’s review, the proposed text amendment and the Board’s recommendations are

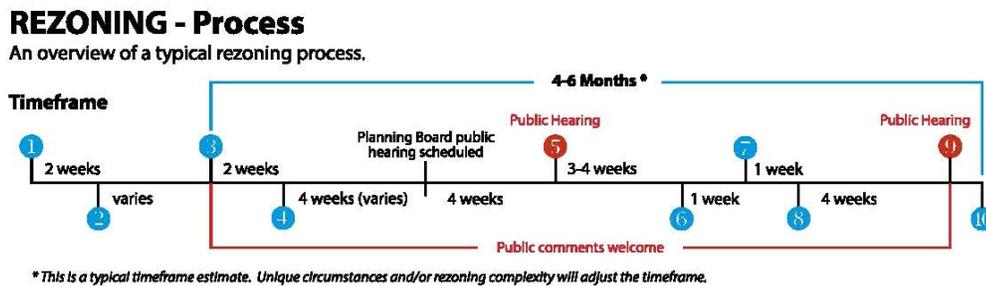
forwarded to the City Council for a final decision. If the proposed amendment is adopted by City Council, then it is forwarded to the Mayor for signature.¹⁰

Map Amendment—A map amendment, or *rezoning*, is a public process that amends the City’s official map. For example, a landowner may apply for rezoning to open a business on a property that is zoned for residential use. Rezoning may also amend the City’s official map to correct errors, to reflect changed or changing conditions in a particular area of the City, or to change regulations to promote public health, safety, or general welfare as necessary.

Figure 3 summarizes estimated timeframes for a typical rezoning. Timeframes may vary based on the complexity of the application and underlying circumstances. Public outreach is encouraged throughout the rezoning process to notify citizens of pending changes and to obtain input from the public on the effect of the proposed change. Prior to submitting a rezoning application, applicants are encouraged to discuss potential plans with registered neighborhood organizations (RNOs), the City Council member that represents the district, at-large City Council members, and any other interested parties.

After a rezoning application is filed, CPD staff review the application and make a recommendation to the Planning Board. The Board holds a public hearing to consider the application, related comments, and CPD’s recommendation. Similar to the text amendment process, the Board also assesses the rezoning proposal against criteria specified in the zoning code. Following the Planning Board’s review, the rezoning application and the Board’s recommendations are forwarded to City Council for a final decision. If approved the rezoning application becomes an ordinance and is forwarded to the Mayor for signature. See Appendix B for the rezoning process detailed in full.¹¹

Figure 3: Rezoning Process Timeframes for the City and County of Denver



Source: Department of Community Planning and Development.

Administrative Adjustment—Administrative adjustments are minor changes to pending applications, or to approved plans and permits that provide relief from specified

¹⁰Additional information on processes and procedures related to text amendments is summarized in Denver Zoning Code, §12.4.11.3. Text amendments initiated by the Manager of CPD are not required to be filed in writing. Where a text amendment is necessary only to correct an error or mistake in fact in the zoning code language, the Manager of CPD may submit the application, including agency comments and recommendations, directly to the Council Committee for its consideration.

¹¹ Additional information on rezoning processes and procedures is summarized in Denver Zoning Code, §12.4.10.

standards stated in the zoning code.¹² Available as a remedy only in the New Zoning Code, administrative adjustments may also be used to relieve unnecessary hardship in complying with overriding federal law or to promote context-sensitive development in Denver's established neighborhoods. For example, a landowner may apply for an administrative adjustment to obtain allowable modifications to building standards such as height or the placement of building within property boundaries and proximity to the street. Administrative adjustments are not intended to relieve cases of financial hardship or to circumvent the intent of the zoning code and its standards.¹³

Board of Adjustment for Zoning Appeals and Variances

The Board of Adjustment for Zoning Appeals (BOA) is an independent board that hears appeals and provides relief from the requirements of the City's zoning codes, when certain conditions are met. The BOA's decisions are considered to be quasi-judicial in nature, and as such may be reviewed only by courts of record. Board members are appointed for five-year terms by the Mayor. Currently, BOA is supported by three staff members, including a Technical Director.

The BOA has the following review and decision-making authority:

- **Administrative Review**—Review and reversal of decisions for instances in which a landowner or other party can prove that the Zoning Administrator has erred in his or her interpretation or application of the zoning code.
- **Variance**—Review and approval of *variances* or relief from specified standards as stated in the zoning code. Variances cannot be used to authorize a new use that is not permitted in the zone district. Unlike administrative adjustments, variances are available as a remedy under both the Old and New Zoning Codes.
- **Stays or Delays of Enforcement**—Authority to *stay* or suspend for up to five years the effective date of CPD orders to halt the operation of dwelling units in excess of the number authorized by the zoning code, particularly when the BOA finds that the literal enforcement of code will result in unnecessary hardship due to unique or exceptional circumstances. The BOA may also delay for six months the enforcement of CPD orders to halt and discontinue any use that is not authorized in the zoning code, when the board finds that such enforcement will result in unnecessary hardship due to unique or exceptional circumstances. Examples of exceptional circumstances may include a property owner's physical condition or age.¹⁴

BOA decisions require a quorum of three members. If the appellant is dissatisfied with a decision he or she is entitled to file an appeal with the Denver District Court under Colorado Rule of Civil Procedure 106(4). In 2014, five cases were filed under rule 106.

¹² Denver Zoning Code §12.4.5.

¹³ Denver Zoning Code §12.4.5.1.

¹⁴ Denver, Colorado, Denver Revised Municipal Code, Chapter 59, Article II, Division 3 and Denver Zoning Code, Article 12, §12.2.6 provides additional information on the authority, composition, rules, and proceedings for the BOA.

SCOPE

The audit examined the impact of the Department of Community Planning and Development (CPD) administering concurrent zoning codes to regulate planning and development in the City and County of Denver. Specifically, this audit sought to evaluate the functional challenges associated with concurrent administration of two zoning codes, including the effect on regulation, permitting, inspections, and staff training. The audit also reviewed the extent to which there are challenges for citizens and other stakeholders related to administrative processes and procedures.

OBJECTIVE

The purpose of the audit was to assess the impact of administering concurrent zoning codes on CPD operations, citizens, and other stakeholders.

METHODOLOGY

We used several methodologies to achieve the various audit objectives:

- Reviewed the City's zoning codes—Former Chapter 59 and the Denver Zoning Code—and other related documents to identify and summarize how the codes regulate key aspects of development, such as the location and dimensions of structures, land use, and parking
- Reviewed departmental documents, including annual budgets (2010 through 2015), to obtain information about the administrative processes and procedures used to administer the City's zoning codes, and data on associated costs
- Examined Former Chapter 59 and the Denver Zoning Code to identify key differences between the codes, including variations in regulations, administrative processes and procedures, and associated costs
- Interviewed CPD officials and other stakeholders to obtain contextual information about the City's regulatory framework for zoning, including reasons for the concurrent administration of Former Chapter 59 and the Denver Zoning Code and associated trade-offs
- Reviewed documents from CPD and others to determine what steps, if any, have been taken to assess the benefits and costs of administering Former Chapter 59 and the Denver Zoning Code concurrently—including trade-offs related to administrative processes and procedures, budgetary resources, and stakeholder interests

- Analyzed information about trade-offs associated with concurrent administration of Former Chapter 59 and the Denver Zoning Code to determine whether there are opportunities to improve existing processes and procedures and reduce costs

FINDING

Community Planning and Development Should Assess Whether Converting to a Single Zoning Code Would Improve the Consistency and Efficiency of Zoning Administration

The existence of two zoning codes in the City and County of Denver is challenging for City administrators and external stakeholders alike. According to the Department of Community Planning and Development (CPD), these challenges include difficulties associated with the implementation of the City's long-term goals and staff training, as well as citizen inequity. Although we were able to validate some of the challenges that CPD identified, such as those related to citizen equity, we were unable to verify others due to insufficient data and information. During the course of our audit work we also examined certain zoning administration activities to identify potential costs, benefits, and trade-offs resulting from the administration of the New Zoning Code. Although we were unable to verify a direct relationship in all instances between the trends that we observed and improved administrative efficiency, there is some indication that the New Code may be more efficient to administer.

CPD believes that converting to a single zoning code could help reach established goals and address inequity and inefficiency. However, CPD has not developed a comprehensive strategy for undertaking this conversion. Specifically, CPD has not clearly outlined the costs and benefits of the conversion, analyzed associated risk, or established a framework for evaluating the success of a conversion. In addition to establishing a strong business case for the funds required to move to one code, this type of analysis could also help CPD evaluate and improve its zoning administration operations overall.

Several Challenges Associated with Administering Two Zoning Codes

According to CPD officials, the administration of two zoning codes is challenging, not only from an internal operations perspective but also for citizens and other stakeholders who are engaged in different aspects of the zoning process. Specifically, citizens who own land that is regulated under provisions of the Old Zoning Code do not benefit from the more streamlined processes available to landowners whose parcels are governed by the New Zoning Code. Second, regulating land use under an old and new code makes it difficult for CPD to implement the City's established long-term goals for land use. Finally, there are administrative burdens associated with training staff to carry out zoning-related tasks that vary based on provisions that differ between the two codes.

Differences between Codes Result in Citizen Inequity

We found that administering two zoning codes calls into question citizen equity in that some land-owners are subject to more onerous provisions under the Old Zoning Code when making changes to their property or how it is used. Furthermore, the lack of a single zoning code has created both substantive and procedural differences that could result in the inequitable treatment of citizens. Officials cited the sale of homegrown produce or

homemade food—commonly referred to as *cottage foods*—as an example of substantive and procedural differences that have emerged from the existence of two zoning codes. The New Zoning Code outlines specific provisions for residents who wish to sell cottage foods, while the Old Zoning Code does not. Residents who live in areas regulated under the Old Zoning Code who also wish to participate in the cottage foods industry may be subject to procedures that require more steps for approval than residents whose parcels are regulated under the New Zoning Code. To illustrate the substantive and procedural differences between the two zoning codes, we compared provisions for the sale of fresh produce and cottage foods. Through our analysis, we determined that the process to obtain a permit to sell fresh produce and cottage foods on a property zoned for residential use is substantially longer for landowners of parcels regulated under the Old Zoning Code. The process for landowners of parcels regulated under the Old Zoning Code is approximately thirty to forty days. Landowners of parcels regulated under the New Zoning Code, when appearing in person, can complete the process in one day.

Table 3 summarizes the results of our comparative analysis.

Table 3: Comparison of Zoning Code Provisions for Fresh Produce and Cottage Food Sales on Properties Zoned for Residential Use

	Old Zoning Code Former Chapter 59, Denver Revised Municipal Code (Adopted in 1956)	New Zoning Code Denver Zoning Code (Adopted in 2010)	Other Information
Provisions for fresh produce and cottage food sales expressly outlined in the relevant zoning code?	No	Yes	n/a
Alternative zoning path available?	Yes ^a	n/a	Former Chapter 59 of the Denver Revised Municipal Code permits uses that could include the sale of fresh produce and cottage foods for residential properties under provisions for <i>home occupations accessory to primary residential use</i> . However, under Former Chapter 59, some residential zone districts restrict home occupations to four uses—adult care homes, childcare, foster family care, and office. All other home occupations, including those that could be included under provisions for “other similar home occupations,” are prohibited. Also, retail sales (including food sales), are generally prohibited for residential properties that are part of a zone districts that are located in predominantly office business districts. Finally, fresh produce and cottage food sales permitted under unlisted accessory use provisions are subject to the same limitations that apply to home occupations allowed under the Denver Zoning Code.
Decision-making authority for assessing proposed sales under the alternative zoning path?	Zoning Administrator	n/a	n/a

Consideration of related precedent under the Denver Zoning Code?	Yes	Yes	The Zoning Administrator, or designee, is able to consider precedent for fresh produce and cottage food sales allowed under the Denver Zoning Code.
Non-resident employees allowed?	No	No	n/a
Separate entrance to home business allowed?	No	No	n/a
Signage limitations (100 square inches)?	Yes	Yes	Signs are limited to 100 square inches.
Indoor business area limitations?	Yes	Yes	Indoor business area is limited to 20 percent of the residence or 300 square feet maximum.
Zoning permit required?	Yes	Yes	Property owners must submit an application for a Home Occupation Zoning Permit application, along with the application fee.
Application fee	\$100	\$20	n/a
Application review period	30 – 40 days	Same day issuance for in-person applications, or several days for applications submitted by mail or e-mail.	For properties regulated under the Old Zoning Code, CPD allows thirty to forty days to review the application, related public comments, and issues a final decision on the application. The final decision may include, addition terms and conditions where applicable. For properties regulated under the New Zoning Code, CPD officials estimates the review period for Fresh Produce and Cottage Food Sales Home Occupation permits to be between one and two weeks for applications submitted by mail or email.
Notice to public required?	Yes	No	For properties regulated under the Old Zoning Code, applicants must post signs on the subject property stating that an application has been submitted. Additionally, the applicant must notify the Registered Neighborhood Organization (RNO) and City Council member for neighborhoods located within 200 feet of the subject property. If approved, applicants must post a second sign on property stating approval and describing BOA appeal process. If no appeal is submitted to the BOA after 15 days, then CPD issues a Home Occupation Zoning Permit. Public notice is not required for certain properties that are zoned for business districts, but include some residential use.
Permit approval transferrable to others? ⁹	No	No	n/a
Additional parking spaces required?	No	No	n/a

Source: Auditor's analysis of Former Chapter 59 of the Denver Revised Municipal Code, the Denver Zoning Code, and Department of Community Development and Planning information.

Legend: n/a=Not applicable.

Long-Range Planning Goals Not Easily Implemented

CPD officials report that administering two zoning codes hampers implementation of the City's long-range goals for land use, transportation, and growth management. For example, a stated goal of Denver's Comprehensive Plan 2000 is to anticipate and meet the expanding mobility needs of residents, businesses, and visitors. Specifically, the plan calls for "sustainable solutions" that reflect the "integration of land-use strategies and transportation systems that balance the need for a variety of residential and commercial development while ensuring mobility and quality of life." In conjunction with the Comprehensive Plan, Blueprint Denver states that land use and transportation strategies must increasingly support one another to provide a wide range of living and mobility options, including neighborhood pedestrian connections to cross-town transit. CPD officials have stated that the goal of expanded mobility reflected in these strategic plans is difficult to achieve in areas of the City that are regulated under the Old Zoning Code. Officials attribute this difficulty to regulatory provisions in the Old Zoning Code that reflect 1950s notions of land use and transportation, which favor automobiles as the primary mode of transportation. As a consequence, regulations such as the distance of a building from property lines—commonly referred to as *setbacks*—or parking are often designed to accommodate significant use of automobiles, and not what is needed to most efficiently and effectively incorporate the City's goal of facilitating ease of use for a variety of mobility options. CPD officials have expressed that aligning development in parts of the City that are regulated under the Old Zoning Code with the City's long-range planning goals frequently requires procedural manipulations such as variances or missed opportunities for optimal development. However, we were unable to validate this assertion because CPD does not systematically track data or other information in ways that would allow us to draw valid conclusions about the nature and characteristics of procedural manipulations, how they result in missed opportunities, and the frequency with which they occur.

Additional Staff Training Required To Administer Two Codes

Finally, CPD officials have cited difficulties in "cross-training" staff on rules and regulations as an operational challenge for administering two zoning codes. CPD reports that staff whose work requires knowledge of zoning codes accounts for about 36 percent of its total workforce, and that having a robust understanding of both zoning codes is essential to key departmental functions, such as site plan reviews and issuing permits for residential and commercial development. CPD officials also acknowledged that newer personnel are becoming increasingly reliant on more seasoned staff for institutional knowledge regarding the application of the Old Zoning Code. Although CPD identified staff training as a complication of administering two zoning codes, the Department was unable to quantify the amount of resources that are devoted to staff training in this area. CPD was also unable to provide auditors with data on other indicators of the ability of staff to correctly interpret and apply the zoning code, such as quality control measures, error rates, or processing timeframes.

New Zoning Code May Yield Some Administrative Efficiencies

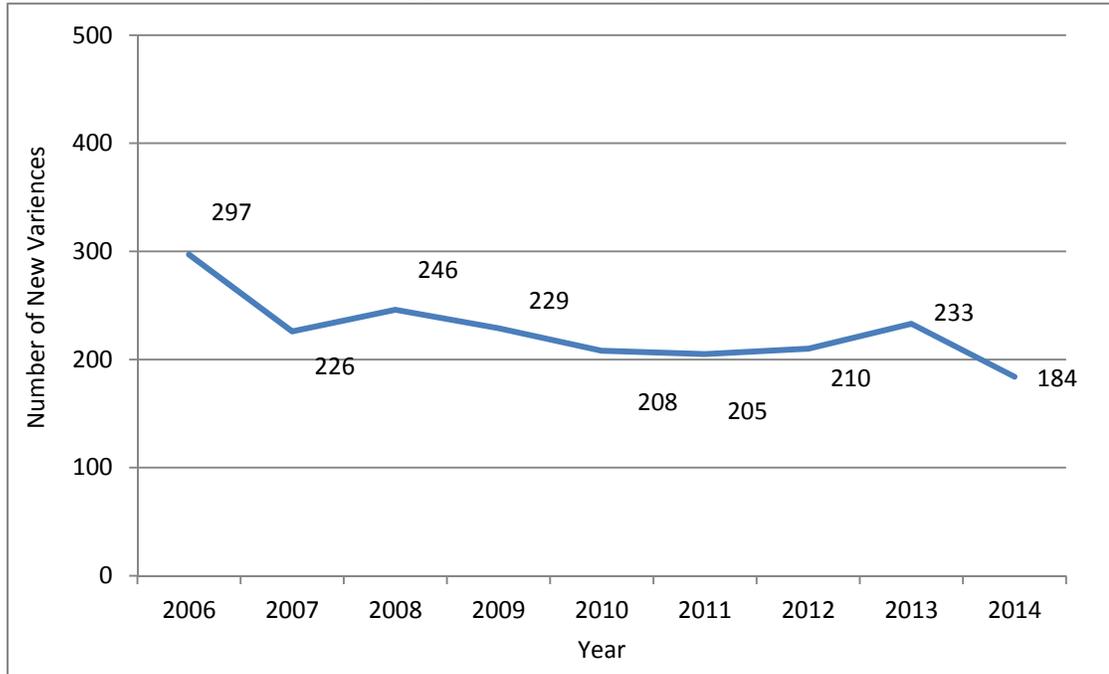
We examined select zoning administration activities to identify additional costs, benefits, or trade-offs associated with administering two zoning codes. Specifically, we analyzed data on variances, administrative adjustments, map adjustments, and text amendments between 2005 and 2014 to determine whether there is a relationship between these activities and administrative efficiency. We determined that while some trends may indicate slight efficiency gains related to the adoption of the New Zoning Code, we were unable to definitively conclude that zoning administration under the new zoning code is more efficient due to data limitations or the inability to control for other factors that may have influenced the trends observed.

Variances—To examine trends in the number of variances requested before and after the City's adoption of the New Zoning Code, we examined data from the Board of Adjustment for Zoning Appeals (BOA) on variance requests submitted between 2006 and 2014.

As shown in Figure 4, we found that the overall number of new requests for variances submitted to the BOA declined approximately 38 percent between 2006 and 2014, from 297 to 184 annual submittals. As of August 17, 2015, ninety-nine new cases were filed compared to the 114 cases filed during a similar time period in 2014.

Since the implementation of the New Code in 2010, annual new variance submittals have remained, on average, fairly stagnant but are trending downward. Both CPD and BOA officials attribute the decline in variance requests to specific characteristics of the New Zoning Code: it provides information in a more user-friendly format; offers improved flexibility in requirements that do not necessitate a variance request; and adds administrative adjustments as an avenue of remedy.

Figure 4: Number of New Variance Submittals to the Board of Adjustment for Zoning Appeals, 2006 through 2014



Source: Auditor's Office analysis of Board of Adjustment for Zoning Appeals data.

Administrative Adjustments—The New Zoning Code outlines the circumstances under which an administrative adjustment may be granted.¹⁵ Conversely, no such relief exists for zone districts regulated under the Old Zoning Code. The flexibility associated with administrative adjustments, therefore, is only available to those zone districts regulated under the New Zoning Code. For landowners with parcels in zone districts regulated under the Old Zoning Code, the only mechanism for obtaining exceptions to the strict letter of the zoning code is the variance process. CPD officials contend that the availability of administrative adjustments for zone districts regulated under the New Zoning Code provides landowners with an expeditious alternative for seeking relief from the zoning code for minor issues and lessens the need to engage in a lengthier variance process through the BOA.

Since the adoption of the New Zoning Code in 2010, CPD has received ninety-six administrative adjustment applications. The overwhelming majority of applications received (93 percent) were approved by the Zoning Administrator. Although CPD does not regularly analyze trends or other contextual information to determine how well the administrative adjustment process is working, the Department did conduct a brief evaluation of administrative adjustments for calendar years 2012 and 2013. For these years, CPD found that administrative adjustments are being granted in accordance with the standards set forth in the New Zoning Code. Further, applicants are experiencing an expedited decision-making process, which is typically two to three weeks for the

¹⁵ Administrative adjustments are defined as exceptions to the strict letter of the zoning code that may be granted by the Zoning Administrator for relatively minor property development.

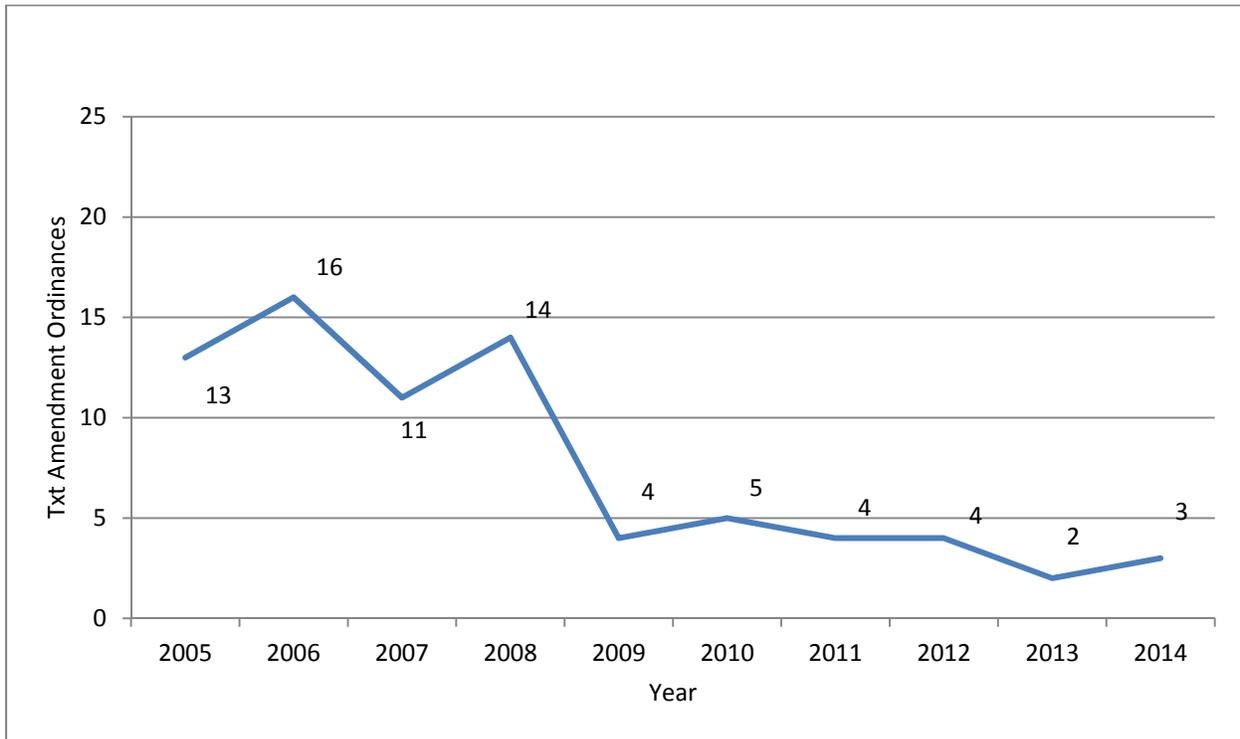
submission of a complete application, compared to three to five months for the variance process.

Overall we found that since 2010, the number of applications for administrative adjustments has steadily increased, while the number of variances submitted has declined. Although the number of variances remains significantly higher than the number of administrative adjustments, CPD officials stated that the availability of administrative adjustments as an alternative remedy from the strict letter of the New Zoning Code reduces the need to undergo the lengthy variance process.

Map Amendments—Map amendments, also referred to as *rezoning*, can occur for zone districts regulated under both the Old and New Zoning Codes. Parcels are rezoned to change regulations within the parameters of a given zoning code. Since the adoption of the New Zoning Code, we found that 66 zone districts have been rezoned to the New Zoning Code, with 1,246 remaining to be converted. CPD officials have stated that rezoning from the Old Zoning Code to the New Zoning Code has been a relatively time-consuming and costly exercise. Although the Department does not systematically collect data on the full amount of staff resources it takes to rezone a parcel, it estimates that it takes staff roughly eight hours to complete a single request for pre-application for rezoning. CPD cites research, analysis, and communication with land owners as primary drivers for the time and costs related to rezoning.

Text Amendments—As shown in Figure 5, we also observed that the number of text amendments has decreased since 2010, ranging from a high of sixteen in 2006 to a low of two in 2013. CPD officials attribute this trend to the easy-to-understand, user-friendly language of the New Zoning Code. Furthermore, officials noted that the context-based nature of the New Zoning Code sets standards that can accommodate a variety of development concepts, and lessens the need to amend or update language that is overly prescriptive. However, it should be noted that there are additional factors that may have contributed to decline in text amendments since 2005. Specifically, the Denver Revised Municipal Code expressly prohibits amendments to the text of the Old Zoning Code, which may have contributed to the low levels since 2010. Also, as previously discussed, text amendments are actual changes to the language of the zoning code, which must be approved by City Council. In 2010, CPD began consolidating multiple text amendments into omnibus legislation, which may have also played a role in the low levels of text amendments in recent years.

Figure 5: Number of Text Amendments Adopted by City Council, 2005 through 2014



Source: Auditor's Office analysis of City and County of Denver Legislative History and Department of Community Planning and Development Data.

CPD Believes that Converting to a Single Zoning Code Could Help Reach Established Goals and Address Inequity and Inefficiency Issues

CPD has highlighted the following benefits that would be realized by converting all zone districts in the City to the New Zoning Code:

- Eliminate out-of-sync zoning that impedes the City's long-range land use, transportation, and growth management plans and goals
- Provide all City residents and businesses with the benefits of the New Zoning Code
- Eliminate the daily complications associated with administering two zoning codes, reducing public and staff time and resources devoted to the rezoning process

For 2015, CPD requested funding to support its efforts of converting to a single zoning code. According to CPD's budget justification documentation, the project would move all parcels regulated by the Old Zoning Code to the New Zoning Code through legislative re-mapping. CPD estimates that reliance on land owner initiated re-mapping request for the more than 1,200 parcels regulated under the Old Zoning Code (at a rate of twelve to fourteen cases per year) would take the City more than 115 years to complete at a cost of \$9.3 million, or almost \$81,000 per year. In contrast, CPD estimates that a comprehensive conversion to the New Zoning Code could be completed in approximately two and one-half years for an upfront cost of \$571,000 (\$421,000 in

professional staff resources and \$150,000 for professional staff services). According to CPD officials, the request was not included as part of the Mayor's budget for 2015 due to other budget priorities.

CPD Has Not Developed a Comprehensive Strategy To Ensure Successful Conversion to a Single Zoning Code

Despite the challenges that CPD has identified with administering two zoning codes, the Department has not systematically evaluated the impact of administering two zoning codes on citizens or its operations. CPD officials confirmed that the adverse impacts that it has identified are largely supported by an informal collection of staff experiences over time, and not by measurable evidence to support its business case for converting to a single zoning code. U.S. Government Accountability Office (GAO) guidance emphasizes the importance of evaluating programs using research methods to collect and analyze data to assess how well government operations are working and why.¹⁶ Such analysis would provide decision-makers with the information necessary to draw valid conclusions about the impact of administering two zoning codes, and support the identification of effective practices or interventions.

Furthermore, CPD has not assessed risks associated with converting to a single zoning code. GAO internal control standards highlight the necessity of risk assessments in identifying, analyzing, and responding to risk to government operations. Such assessments allow organizations to evaluate potentially adverse events; define steps that can be taken to reduce the potential that such events will occur; and determine steps that can be taken to deal with potentially adverse events should they occur.¹⁷ By not conducting a risk assessment, CPD remains holistically unaware of the City's exposure to potentially adverse consequences stemming from changes to the zoning administration framework. Such risks could include legal challenges to the City's interpretation and application of the zoning code, or administrative complications arising from required changes in processes, procedures, or information system adaptations.

Finally, CPD lacks a framework that would enable it to gauge the success of converting to a single code. GAO program evaluation guidance also discusses the importance of such evaluations in clarifying goals and objectives, identifying data sources to obtain credible information, and developing plans to analyze information to draw valid conclusions about the effectiveness of administrative activities in addressing stated goals and objectives.¹⁸ Without such a framework, CPD will be unable to ascertain whether the conversion has attained the anticipated benefits or results, or whether further policy or administrative refinements are necessary to address the challenges identified.

¹⁶ GAO, *Designing Evaluations: 2012 Revision*, GAO-12-208G (Washington, D.C.: Jan. 31, 2012). While there is not a standard government definition of "program," the term can be defined in various ways for budgeting or policy-making purposes, including projects, functions, or policies.

¹⁷ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sep. 10, 2014). These standards, commonly referred to as "The Green Book," may also be adopted by state, local, quasi-governmental entities, and not-for-profit organizations as a frame work for an internal control system.

¹⁸ GAO-12-208G

RECOMMENDATIONS

Should the Department Community Planning and Development continue to pursue conversion of all parcels in the City to a single zoning code, it should develop a comprehensive strategy or business plan that ensures the success of the conversion and that it is the best interest of the City and the citizens. Such a plan should include citizen outreach and education to understand the full impact of a conversion to the community. We offer three recommendations to assist the Department with improving its conversion planning efforts. We also believe that such information could help CPD evaluate its zoning administration operations more broadly, and determine whether additional steps could be taken to address inconsistencies and inequities stemming from reasons other than the administration of two zoning codes.

1.1 Benefit Cost Analysis—Community Planning and Development should collect and analyze data that would allow it to obtain measurable evidence to understand the costs and benefits of converting to a single zoning code or continuing to administer two codes.

1.2 Risk Assessment—To ensure that the City has a holistic understanding of its exposure to adverse consequences stemming from changes to the zoning administration framework, Community Planning and Development should conduct a risk assessment. Such an assessment should include an evaluation of potentially adverse events, define steps to reduce the likelihood that adverse events will occur, and determine steps that can be taken to deal with potentially adverse events should they occur.

1.3 Performance Evaluation—If a single code is adopted, Community Planning and Development should develop a performance evaluation framework that addresses stated challenges, and achieves anticipated benefits or results. Specifically, the framework should clarify the goals and objectives of the conversion, identify data sources to obtain credible information, and include plans to analyze information to draw valid conclusions about the effectiveness of conversion efforts.

APPENDIX A

Authorizing Legislation for City and County of Denver Zoning Administration

Authorizing Legislation	Description
Denver Zoning Code (2010)	<p>Adopted in 2010, the Denver Zoning Code was enacted to implement Denver's Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants.</p> <p>Article 12 of the Denver Zoning Code (Zoning Procedures and Enforcement) provides a summary of all zoning procedures applicable to new development in the City and County of Denver. Specifically, Article 12:</p> <ul style="list-style-type: none"> ● Identifies all of the review and decision-making bodies and their respective roles under the Code; ● Describes steps common to most or all zoning procedures; ● Describes the steps required for each type of zoning procedure; ● Identifies rules for non-conforming and compliant uses, structures, and lots; and ● Identifies general enforcement provisions, including what constitutes Code violations and associated penalties.
Chapter 59, Denver Revised Municipal Code (Concurrent)	<p>Specifies that the zoning code as filed with the Denver City Clerk on 8th day of June 2015, at City Clerk Filing No. 2015-0211-E is hereby adopted as the official zoning code for the City and County of Denver ("Denver Zoning Code"). The Denver Zoning Code and all amendments thereto shall be maintained in and kept current by the department of community planning and development and shall be available to the public.</p> <p>Also, states that Chapter 59 of the Denver Revised Municipal Code as filed with the Denver City Clerk on 20th day of May 2010, at City Clerk Filing No. 10-512, ("Former Chapter 59"), shall remain in full force and effect for any land not rezoned to zone districts</p>

	in the Denver Zoning Code. No changes shall be enacted to the provisions of the former chapter 59 after June 25, 2010.
Former Chapter 59, Denver Revised Municipal Code (1956)	Adopted in 1956, Former Chapter 59 of the Denver Revised Municipal Code is the zoning code of record for any land that is not currently regulated by the Denver Zoning Code. Similar to the Denver Zoning Code, Article II of Former Chapter 59 also outlines provisions for zoning administration and enforcement.

Source: Auditor's Office analysis of Former Chapter 59 of the Denver Revised Municipal Code and the Denver Zoning Code.

APPENDIX B

Rezoning Process for the City and County of Denver

Rezoning Process Step	Description
Step 1: Pre-Application Review	Applicant submits the rezoning review pre-application review request form
Step 2: Public Outreach	Rezoning applicants are encouraged to discuss potential plans with the relevant registered neighborhood organizations, City Council members, and other interested parties
Step: 3 Submission of Application	Applicant submits the rezoning application and required fee
Step 4: City Review and Customer Resubmittal (<i>if necessary</i>)	City staff review the rezoning application
Step 5: Planning Board Public Hearing	A public hearing before the Denver Planning Board is schedule for one of the board's meetings. All vested parties are invited and public comments are accepted.
Step 6: City Council's Neighborhoods & Planning Committee Meting	A presentation is scheduled for one of the committee meetings
Step 7: Mayor-Council Meeting	The Mayor and all Council member will be briefed on the rezoning ordinance scheduled for City Council first reading
Step 8: City Council First Reading of a Bill	The rezoning bill is read for the first time. The City Council public hearing is officially scheduled
Step 9: City Council Public Hearing	Second reading and a public hearing before the City Council. The public invited to speak on the case and provide testimony. Once public testimony is complete, the Council deliberates and votes to approve, approve with conditions, or deny the rezoning application
Step 10: Next Steps	If approved, the ordinance is forwarded to the mayor for signature and goes into effect the following Thursday

Source: Department of Community Planning and Development.



October 7, 2015

Mr. Kip R. Memmott, MA, CGAP, CRMA
Director of Audit Services
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. Memmott:

The Office of the Auditor has conducted a performance audit of Community Planning and Development Zoning Administration.

This memorandum provides a written response for each reportable condition noted in the Auditor's Report final draft that was sent to us on October 6, 2015. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1

Community Planning and Development Should Assess Whether Converting to a Single Zoning Code Would Improve the Consistency and Efficiency of Zoning Administration

RECOMMENDATION 1.1		
Benefit Cost Analysis —Community Planning and Development should collect and analyze data that would allow it to obtain measurable evidence to understand the costs and benefits of converting to a single zoning code or continuing to administer two codes.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	Dec. 31, 2017	Evelyn Baker, Deputy Director, CPD 720.865.2823

Narrative for Recommendation 1.1

CPD agrees that the analysis recommended by the Auditor's office would be valuable in helping to inform the decision to convert to a single zoning ordinance. The collection and analysis of this data is something that CPD would typically perform as a first phase of a project like the zoning code conversion. The recommendation, however, to perform this work separate from the project itself, to help to inform both the decision of whether to move forward with the effort, and the work plan, should the project move forward, is a good one.

CPD had completed a more general preliminary analysis previously, but in order to provide the more comprehensive analysis recommended, CPD will need to identify the staffing and infrastructure needed.

RECOMMENDATION 1.2		
Risk Assessment —To ensure that the City has a holistic understanding of its exposure to adverse consequences stemming from changes to the zoning administration framework, Community Planning and Development should conduct a risk assessment. Such an assessment should include an evaluation of potentially adverse events, define steps to reduce the likelihood that adverse events will occur, and determine steps that can be taken to deal with potentially adverse events should they occur.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	Dec. 31, 2017	Evelyn Baker, Deputy Director, CPD 720.865.2823

Narrative for Recommendation 1.2
See response to Recommendation 1.1 above.

RECOMMENDATION 1.3		
Performance Evaluation —If a single code is adopted, Community Planning and Development should develop a performance evaluation framework that addresses stated challenges, and achieves anticipated benefits or results. Specifically, the framework should clarify the goals and objectives of the conversion, identify data sources to obtain credible information, and include plans to analyze information to draw valid conclusions about the effectiveness of conversion efforts.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	TBD	Evelyn Baker, Deputy Director, CPD 720.865.2823

Narrative for Recommendation 1.3
CPD supports this recommendation in the event that a single code is adopted. CPD commits to developing the performance evaluation framework as recommended prior to the adoption of a single code.

Please contact Evelyn Baker, Deputy Director, CPD at 720.865.2823 with any questions.

Sincerely,

Brad Buchanan, FAIA
Executive Director

cc: Evelyn Baker, Steve Ferris, Jill Jennings Golich, Caryn Champine