

MILLCREEK, UTAH
ORDINANCE NO. 21-31

**AN ORDINANCE AMENDING TITLE 19 OF THE MILLCREEK ORDINANCE TO
ENACT CHAPTER 19.73A, ENTITLED “CITY CENTER OVERLAY –
DEVELOPMENT AGREEMENT ZONE”**

WHEREAS, the Millcreek Council (“Council”) met in regular session on July 26, 2021 to consider among other things, approving an ordinance amending Title 19 of the Millcreek Ordinance to enact Chapter 19.73A, entitled “City Center Overlay – Development Agreement Zone”; and

WHEREAS, Utah Code Ann. § 10-9a-503 provides in part that the Council may amend any regulations of a zoning district; and

WHEREAS, Millcreek (“City”) has adopted a comprehensive zoning ordinance (“Zoning Ordinance”); and

WHEREAS, the City has adopted a City Center Master Plan (“Plan”); and

WHEREAS, City staff, City consultants, and other persons have recommended that the Council revise the Zoning Ordinance to adopt a City Center Overlay-Development Agreement Zone in a manner that fulfills the intent of the Plan; and

WHEREAS, Utah Code Ann. § 10-9a-502 provides planning commission shall provide notice as required by Subsection 10-9a-205(1)(a) and, if applicable, Subsection 10-9a-205(4) and hold a public hearing on the proposed land use ordinances; and

WHEREAS, on May 7, 2021, the required notice was published; and

WHEREAS, on May 19, 2021, the proposed amendment was submitted to the planning commission for its recommendation; and

WHEREAS, on May 19, 2021, the planning commission held the required public hearing with respect to amending Title 19 of the Millcreek Ordinance to enact Chapter 19.73A, entitled “City Center Overlay – Development Agreement Zone”; and

WHEREAS, at the May 19, 2021 planning commission meeting, the planning commission voted to continue this matter to a subsequent meeting for further consideration; and

WHEREAS, On June 3, 2021, the planning commission held a special meeting to reconsider this matter and voted to continue this matter to a subsequent meeting for further consideration; and

WHEREAS, at the June 29, 2021 planning commission special meeting the Millcreek Planning Commission reconsidered the City Center Overlay – Development Agreement Zone and voted to recommend approval to the City Council; and

WHEREAS, at the June 29, 2021 planning commission special meeting the Millcreek Planning Commission recommended that the City Center Overlay – Development Agreement Zone expire three years after the date it is enacted by the Council; and

WHEREAS, the Millcreek Code of Ordinances, provides among other things, that before finally adopting any such rezone, the Council shall consider the application during a public meeting which has been properly noticed in compliance with the provisions of Title 52, Chapter 4, of the Open and Public Meetings Act; and

WHEREAS, on July 21, 2021, the Council caused the required notice to be given; and

WHEREAS, on July 26, 2021 the Council considered amending Title 19 of the Millcreek Ordinance to enact Chapter 19.73A, entitled “City Center Overlay – Development Agreement Zone”.

NOW THEREFORE, BE IT ORDAINED by the Council that Chapter 19.73A of the Millcreek Ordinance is hereby enacted as follows:

19.73A CITY CENTER OVERLAY - DEVELOPMENT AGREEMENT ZONE

- 19.73A.010: Purpose and Intent:
- 19.73A.020: Scope:
- 19.73A.030: Uses Allowed:
- 19.73A.040: Development Approval:
- 19.73A.050: Development Standards:
- 19.73A.060: Other Applicable Regulations:

19.73A.010: PURPOSE AND INTENT:

The purpose of the City Center Overlay – Development Agreement (CCOZ-DA) Zone is to allow flexibility in the strict application of the City Center Overlay Zone Design standards given particular site conditions and opportunities for additional development of public open space, while adhering to the goals of the City Center Master Plan. The application of the development agreement concept is intended to advance the goals of the Millcreek City Center Master Plan and to further the purpose and intent of the City Center Overlay Zone, thus ensuring substantial compliance with the intent of zone regulations and other provisions of this title related to public health, safety, and general welfare, and at the same time securing the advantages of large scale site planning for mixed use development appropriate in Millcreek’s City Center.

19.73A.020 SCOPE AND ELIGIBILITY:

The City Council may approve a CCOZ-DA zone upon receiving a recommendation from the

Planning Commission regarding adoption of the zone and a development agreement. Once a CCOZ-DA zone is established over a particular property, the provisions of this chapter shall apply to all property located within the CCOZ-DA zone as shown on the official zoning map. Development Agreements are entered into and approved at the sole discretion of the City. The CCOZ-DA overlay zone may only be applied to land within the Mill Center and Marketplace Districts of the City Center Overlay Zone.

19.73A.030: USES ALLOWED:

The uses allowed on any lot in the CCOZ-DA zone shall be the same uses allowed in the underlying zone in which the lot is located. Allowed uses may be restricted or modified by development agreement conditions. Allowed uses may not create a nonconforming use or structure.

19.73A.040: DEVELOPMENT APPROVAL:

A. Generally: The use and development of land located in the CCOZ-DA zone shall be approved according to applicable administration and development review procedures applicable to the underlying zone set forth in this title except as modified by this chapter.

1. A CCOZ-DA zone may be used only in combination with the Mill Center and Marketplace Districts within the City Center Overlay Zone, subject to the requirements of this chapter.
2. A CCOZ-DA zone may only be applied to property that has at least 100 feet of frontage along the Millcreek Common or that provides a grade-separated non-vehicular access to the Millcreek Common.
3. Variations from applicable development standards of the City Center Overlay Zone may be approved pursuant to the provisions of this chapter.

B. Preliminary Site Plan Approval: A preliminary site plan shall be submitted and considered concurrently with an application for approval of a rezone to the CCOZ-DA zone. The preliminary site plan shall be considered pursuant to provisions of MKZ 19.02.080, and the application process described in MKZ 19.73.030, except as modified by this section.

1. The preliminary site plan shall show generally, building elevations, architectural elements, building materials, building height, open space, parking, residential unit types, commercial space layouts, landscaping, pedestrian and traffic circulation, drainage, utility layouts, and proposed improvements to public spaces; and
2. If the development is proposed to be developed in phases, the preliminary site plan shall also show phase boundaries. Each phase shall be of such size, composition, and arrangement so that construction, marketing, and operation of each phase is feasible as a unit, independent of any subsequent phases.

3. A development shall be in single ownership and control or under option to purchase by an individual or a corporate entity at the time of application, or the application shall be filed jointly by all owners of the property.
 4. As part of the Preliminary Site Plan Approval, the City at its sole discretion may obtain recommendations from various consultants, including but not limited to: a qualified traffic and parking consultant, and a designer with demonstrated expertise in urban design and placemaking. Consultant services shall be commissioned by the City and paid for by the applicant. The recommendations of these consultants shall be forwarded to staff and the Millcreek Planning Commission and City Council as part of an application for a CCOZ-DA zone approval.
 5. Upon receiving professional recommendations from various consultants, and upon completion of the application process as described in MKZ 19.73.030, each community council and the planning commission shall make a recommendation to the city council regarding a complete application for a CCOZ-DA rezone and development agreement. The planning commission shall approve, approve with conditions, or disapprove the completed application, consisting of, but not limited to, the preliminary site plan and draft development agreement for the property where the development is proposed to be located. At the same time, the planning commission will make a recommendation to the city council to adopt, adopt with conditions or not adopt the rezone of the subject property to the CCOZ-DA Zone. Planning commission approval of a preliminary site plan shall not be effective unless and until CCOZ-DA rezone is approved by the city council.
- C. Zone Change: After action by the planning commission, the city council shall consider the application to rezone the subject property to the CCOZ-DA zone as an amendment of the official zoning map.
1. Submittal of an application for the CCOZ-DA zone does not guarantee the application will be approved. A zoning map amendment may be approved only if the city council, after receiving a recommendation from the planning commission, finds that the proposed CCOZ-DA zone and the associated preliminary site plan:
 - a. Do not conflict with any applicable policy and guidance of the general plan or the City Center Master Plan;
 - b. Will allow integrated planning and design of the site and, on the whole, better development than would be possible under the strict application of the City Center Overlay Zone
 - c. Meets the use, and other requirements of this chapter and the zone with which the CCOZ-DA zone will be combined, except as otherwise allowed by this chapter.

- d. Enhances the public welfare, enhances urban design and walkability, and supports public investment in the Millcreek City Center.
 - e. Does not adversely impact existing public utilities, including but not limited to power, gas, telecommunications, storm water, culinary water, or sanitary sewer.
 - 2. In order to make findings necessary to approve CCOZ-DA zone, conditions of approval may be imposed to assure the master development will:
 - a. Accomplish the purpose of this title;
 - b. Be developed as one integrated land use rather than as an aggregation of individual and unrelated buildings and uses; and
 - c. Meet the requirements of the zone in which the proposed development is located except as such requirements are modified by this chapter and as shown on an approved preliminary site plan for the development.
 - 3. Zoning conditions, as provided in MKZ 19.90.060, also may be placed on property at the time of zoning to restrict or prohibit uses or development that would not be compatible with adjoining uses, notwithstanding whether such uses then exist or future uses as shown in the general plan.
- D. Subdivision Requirements: An application for subdivision approval may proceed concurrently with an application for a site plan approval. Compliance with the requirements of this chapter does not exempt any applicant from meeting other applicable requirements of this title.
- E. Construction Limitations: Upon approval of a zone change and development agreement construction shall proceed in accordance with approved plans and specifications, subject to subsequent conditional use and subdivision approval, if required by the underlying zone, and shall conform to any conditions associated with the preliminary site plan, zone change, or final site plan approval.
- F. Amendments: Amendments to approved plans shall be obtained by following the same procedure required for the original approval.

- G. Development Agreement. In conjunction with approval of a zone change and a preliminary site plan approval, the city may elect to enter into a development agreement with the owner of a proposed development which includes the following provisions.
1. Upon approval of a preliminary site plan and a related development agreement, the preliminary site plan shall vest in the owner the right to develop the subject property as a development, within the parameters set forth in the approved preliminary site plan and approved development agreement.
 2. The development agreement may, among other things, provide that:
 - a. The land subject to the preliminary site plan may be subdivided and the subdivided tracts may be sold to different owners; and
 - b. Any utility, grading and drainage plans, landscaping, fencing, screening plans, signs, lighting, materials and massing requirements, and site plans will be required as part of the site plan approval.
- H. Expiration of Preliminary Site Plan and Development Agreement: Each development agreement shall include a clause that allows the City to re-zone the property and withdraw from the Development Agreement if the Development Agreement is not recorded within two (2) years of execution of the Development Agreement, or in the event the applicant has failed to commence physical construction within two (2) years of the execution of the Development Agreement. The applicant can make a written request for an extension of the 24-month period to the Planning Director, but for a period not exceed one (1) year.

19.73A.050: DEVELOPMENT STANDARDS:

- A. Generally: The development standards for any lot in the CCOZ-DA zone shall be the same as in the underlying zone in which the lot is located except as modified by this chapter and an approved site plan and development agreement.
- B. Bulk and Yard Regulations: Bulk and yard regulations for the underlying zone may be modified by development agreement, subject to the following limitations:
1. Maximum height standards may only be modified for office/commercial/civic mixed use buildings, regulated by MKZ 19.73.070 (N)(5)(b). In order to qualify for a modification of the maximum height, an office/commercial/civic mixed use building, as defined in MKZ 19.73.070 (N)(5)(b), shall contain at least 40,000 square feet of public uses. In no case shall the maximum height of an office/commercial/civic mixed use building exceed 85 feet.
 2. Required minimum setbacks may be modified only for building facades that front Millcreek Common.

3. Required setbacks may be modified, but in no event to the point where shade trees, otherwise required, will not flourish to full maturity.
- C. Design Standards and Parking Requirements. Design standards and parking requirements established in the underlying zone and in MKZ 19.80 may be modified by development agreement, subject to the following limitations:
1. Parking requirements may be modified subject to a shared parking analysis using standards established in *Shared Parking, Third Edition* by the International Council of Shopping Centers.
 2. Stucco and EIFS are prohibited for use as materials on any façade visible from a right-of-way, or Millcreek Common.
 3. Except as specified in this chapter, all underlying design standards expressed in numerical form are limited to a modification not exceeding 10% from the underlying standard.
 4. Minimum and maximum heights shall not be modified, except for office/commercial/civic mixed use buildings as defined in MKZ 19.73.070 (N)(5)(b), with at least 100 feet of frontage on the Millcreek Common.
 5. Sign standards shall not be modified.
- D. Effect on Adjacent Properties: The arrangement of structures and open spaces within a development shall assure that adjacent properties will not be adversely affected. Height and intensity of buildings and uses shall be arranged around the boundaries of the development in manner compatible with existing adjacent developments and zones, and with adjacent public spaces.
- E. Setback and Buffer Requirements: Setbacks and buffer requirements shall be as shown on an approved site plan.
- F. Walls and Fences: Walls and fences shall be as shown on an approved site plan.
- G. Height of Buildings: Maximum building height shall be as shown on an approved site plan.
- H. Open Space: Open space requirements and the location and amenities of all open space shall be reviewed and approved as part of the preliminary site plan process.

- I. **Public and Community Facilities:** In addition to dwellings and commercial facilities allowed by the underlying zone, a development may include areas for public or private recreation buildings, and other similar community facilities.

- J. **Required Improvements:**
 - 1. All streets in a City Center Overlay Zone-Development Agreement zone shall be constructed according to city standards and specifications adopted by the city, and shall advance the goals of the City Center Master Plan.

 - 2. Stormwater shall be controlled and managed according to a stormwater plan approved by the city.

 - 3. Infrastructure improvements, including but not limited to utilities, irrigation, street signs, street lighting, fencing, and other required improvements, shall be provided in accordance with city standards and specifications.

- L. **Grading and Drainage Plans:** A detailed grading and drainage plan shall be submitted as part of a site plan application.

- M. **Landscaping, Fencing, and Screening Requirements:** Landscaping, fencing, and screening related to the uses within the site and as a means of integrating the proposed development into its surroundings shall be submitted as part of a site plan application.

- N. **Signs and Lighting:** The size, location, design, and nature of signs, if any, and the intensity and direction of area lighting shall be detailed in a site plan application and shall conform to the City Center Master Plan and the City Center Overlay Zone, and shall comply with all applicable requirements in the City Center Overlay Zone, and shall adhere to best practices regarding dark sky illumination, pursuant to the guidelines of the International Dark Sky Association, as referenced in MKZ 19.73.070 (T).

- O. **Nonconforming uses and noncomplying structures.** Nonconforming uses or noncomplying structures may not be included in any CCOZ-DA approval unless first declared legal through special exception subject to the standards of MKZ 19.88

19.73A.060: APPLICATION PROCESS

An application for an adoption of a CCOZ-DA zone and enactment of a development agreement shall follow the process as outlined in MKZ 19.73.030, in addition to the following public meeting requirements:

- A. Neighborhood Meeting. At least four weeks prior to submitting a complete application, an applicant shall conduct a neighborhood meeting, and provide adequate proof of notice to include the following:
1. The applicant shall send a written notice stating the place, date, and time of the neighborhood meeting to all property owners, as identified in the Salt Lake County recorder's records, whose property is within 600 feet of the property described in the rezone.
 2. The applicant shall notify these owners at least one week prior to the neighborhood meeting.
 3. The neighborhood meeting shall be conducted at a location within Millcreek.
 4. Phone calls or informal door to door contacts shall not be considered to constitute a neighborhood meeting.
 5. The record of a neighborhood meeting shall include:
 - a. A list of all individuals who were notified;
 - b. A roster of attendees; and
 - c. A copy of the minutes.
- B. Joint Work Session of the Planning Commission and City Council. Prior to submitting a complete application and after conducting a neighborhood meeting, an applicant shall schedule with the City a joint work session of the Planning Commission and City Council. The purpose of the joint work session will be to discuss the proposed project and potential development agreement in conceptual detail. A Joint Work Session of the Planning Commission and City Council must be held prior to submitting a complete application.

19.73A.070: OTHER APPLICABLE REGULATIONS:

To the extent that use and development of land located in a CCOZ-DA zone includes any matter governed by other applicable regulations set forth in this title, such regulations shall apply in addition to the requirements of this chapter.

NOW THEREFORE, BE IT FURTHER ORDAINED by the Council that Chapter 19.73A of the Millcreek Ordinance is repealed on July 26, 2024.

PASSED AND APPROVED this 26th day of July, 2021.

MILLCREEK COUNCIL

By: _____
Jeff Silvestrini, Mayor

ATTEST:

Elyse Sullivan, City Recorder

Roll Call Vote:		
Silvestrini	Yes	No
Marchant	Yes	No
Jackson	Yes	No
Catten	Yes	No
Uipi	Yes	No

CERTIFICATE OF POSTING

I, the duly appointed recorder for Millcreek, hereby certify that:
ORDINANCE 21-31: AN ORDINANCE AMENDING TITLE 19 OF THE MILLCREEK
ORDINANCE TO ENACT CHAPTER 19.73A, ENTITLED “CITY CENTER OVERLAY –
DEVELOPMENT AGREEMENT ZONE” was passed and adopted the 26th day of July 2021 and
certifies that copies of the foregoing Ordinance 21-31 were posted in the following locations
within the municipality this ____ day of July, 2021.

1. Millcreek City Hall, 3330 S. 1300 E., Millcreek, UT 84106
2. Millcreek Community Center, 2266 E. Evergreen Ave., Millcreek, UT 84109
3. Calvin S. Smith Library, 810 E. 3300 S., Millcreek, UT 84106

Elyse Sullivan, City Recorder