

# DEVELOPING Pittsburgh

An aerial photograph of Pittsburgh, Pennsylvania, showing the city skyline across the river. The foreground features a modern riverfront development with a large white satellite dish, a curved walkway, and green spaces. The river flows through the center, with several bridges visible in the background. The city's dense urban landscape and prominent skyscrapers are visible in the distance under a clear blue sky.

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## DEVELOPING THE RIVERFRONTS

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## Down by the River: Pittsburgh's Proposed Riverfront Interim Planning Overlay District

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s Pittsburgh transitions further away from its industrial past, the City has

determined that the industrial zoning applicable to large swaths of its riverfront should be replaced. To that end, the City is considering a significant amendment to zoning regulations for properties near the Allegheny, Monongahela and Ohio Rivers in hopes of encouraging commercial, residential and mixed use development, protecting the riverfront environment and ensuring that the rivers are an accessible public amenity.

### Current Riverfront Zoning

The Zoning Code already contains a Riverfront Overlay ("RF-O") district which imposes additional restrictions and development requirements – and enables some additional uses – on the properties within 50 feet of Pittsburgh's three rivers. The City is now proposing a new "Riverfront Interim Planning Overlay District" or "Riverfront IPOD." According to the City, the "proposed Riverfront Interim Planning Overlay District (IPOD) is the first step in a rezoning effort which will result in a permanent Riverfront zoning district that

better reflects a shared vision for the riverfront."

### Overlay and Interim Zoning

All real estate in Pittsburgh is located in at least one base zoning district (some of which are technically called subdistricts). The base zoning districts appear on Pittsburgh's zoning map with designations such as Local Neighborhood Commercial, Multi-Unit Residential and General Industrial. Each base zoning district has a set of rules regarding the buildings that can be constructed on a property and the types of activities that can occur. The Pittsburgh Zoning Code also creates what are known as "overlay districts." As the name implies, an overlay district is placed on top of a base district, thus modifying – but not eliminating – the rules of the base district. Overlay districts often impose stricter rules than the underlying base district, but in some instances overlay districts ease or eliminate such rules. An Interim Planning Overlay District or IPOD is an overlay district which is purposely designed to be temporary. The Pittsburgh Zoning Code allows IPODs to remain in effect for eighteen months, with the possibility of a single six-month extension. Over the years, Pittsburgh has had IPODs covering areas such as Oakland, Uptown, Walnut Street and the Baum Boulevard/Centre Avenue Corridors.

### The Riverfront IPOD

While the proposed Riverfront IPOD amendment has evolved as the City has received feedback, all proposals to date impose a number of restrictions on new developments within the boundaries of the Riverfront IPOD. The current proposal incorporates restrictions from the already-existing Riverfront Overlay District within 50 feet of a river, and proposes an additional restriction on the portion of a building that may be located within 95 feet of the

riverfront. Another proposed restriction seeks to prevent long, uninterrupted building walls parallel to a riverfront by limiting the total length of the wall and requiring intermittent breaks or "articulations" such as stepbacks, building entrances, lobbies, doors, windows or similar features.

The proposed Riverfront IPOD also imposes restrictions on parking lots and structures in and around the riverfront, with provisions limiting visibility, requiring screening and prohibiting certain surface parking.

With enactment of the proposed Riverfront IPOD many more projects may be subject to additional planning review. For example, all developments over a certain size (currently 10,000 square feet) or that add a certain number of new parking spaces (currently 15) are required to go through Site Plan Review with the City Zoning Administrator. This review addresses issues related to the use, scope and intensity of a proposed project, the design of the project's site, building and landscape, and traffic and transportation. Furthermore, under the proposed amendment, certain projects within 200 feet of a riverfront – what is being termed "Zone A" of the Riverfront IPOD – will need to have a Project Development Plan approved by the Planning Commission. This additional step is being proposed for a variety of projects, including building demolition, many new or enlarged parking areas, new or enlarged buildings of any size that are adjacent to the riverfront and all buildings or additions over a certain size. Properties within the Riverfront IPOD, but more than 200 feet from a river fall into what is being called "Zone B." A shorter list of projects in Zone B are slated to need a Project Development Plan – they include new or enlarged parking areas over a certain size (currently 15 parking spaces) and



projects over a certain size (currently 10,000 square feet). A map showing the boundaries of the Riverfront IPOD and Zone A and Zone B can be viewed on the City's website.

All Project Development Plans must undergo Design Review, which often includes review by Pittsburgh's Contextual Design Advisory Board or CDAP. While most major projects in Pittsburgh were already subject to this review, the City has made clear that design considerations are especially important in the Riverfront IPOD: "We want to ensure that new development is respectful of, and responsive to, existing neighborhood fabric as well as communities' visions for their neighborhoods and the public amenity that is the river."

### Possible Challenges to the Amendment

As general concepts, both overlay zoning districts and interim zoning have been upheld by Pennsylvania courts. However, they can be susceptible to legal challenge if not properly done. The most common challenges to zoning code amendments seek to invalidate them based on a claim that the municipality failed to follow the correct process, provide the required notice, or give citizens an opportunity to be heard on the changes. Interim or temporary zoning measures also have been successfully challenged because they fail to reflect a logical planning scheme and, instead, merely preserve the status quo while the municipality works on its zoning code. Those interim zoning ordinances that impose outright bans on development are more likely to be invalidated under this argument than those that merely impose additional development restrictions and require review while a permanent zoning solution is being devised.

Another frequent challenge to zoning amendments is the accusation of "spot zoning." Spot zoning occurs when a zoning regulation unfairly singles out a small number of properties for special treatment, either beneficial or detrimental. If a municipality cannot sufficiently justify the special treatment of such a

property, courts will likely invalidate the zoning regulation that imposes that treatment. In deciding this question, Courts tend to look more favorably on zoning regulations that impose special treatment on properties that have some common yet unique physical attribute, such as topography. While the City may have avoided the most potent spot-zoning arguments by including all properties along Pittsburgh's three major rivers, any line-drawing exercise such as the Riverfront IPOD still may need to contend with such arguments.

### Timing

As a general rule – and constitutional right – most laws do not apply retroactively. Therefore, generally speaking, a person must comply with the zoning ordinance as it exists at the time an application for building and development approval is filed. In Pennsylvania, however, there is an exception to this general rule. Under the "Pending Ordinance Doctrine" a municipality may withhold permits for a project if the application is filed after the new ordinance is "pending." For purposes of this rule, "pending" means after a municipality releases the proposed text of the amendment and issues notice of a public hearing regarding it.

The Riverfront IPOD amendment was introduced at the end of 2015 by letters to affected property owners, postings to the City's website and announcements to the media. During early January 2016, the City held public meetings and solicited public input on the proposed changes, and, in early February, posted a revised version of the amendment on its website. The Pittsburgh Planning Commission conducted a public hearing on February 9, 2016, and after hearing testimony both in support of and expressing concerns about the Riverfront IPOD amendment, tabled the proposal to allow for further consideration. The Planning Commission meets on alternate Tuesdays, and will revisit the proposed amendment and make its recommendation at an upcoming meeting.

### What's Next

After the Planning Commission issues its recommendation, the Riverfront IPOD amendment will be brought before City Council for consideration. If the Planning Commission recommends approval, City Council may pass the amendment on a simple majority vote. However, Section 922.05.E of the Zoning Code states that, if the Planning Commission recommends disapproval, then City Council needs seven votes to pass the amendment. If the Riverfront IPOD amendment passes, it is currently slated to be codified as Section 907.02.J of the Zoning Code.

Property owners who are in compliance with the existing Zoning Code, but will not be in compliance with the Riverfront IPOD or the final permanent riverfront district being contemplated by the City, may want to establish their current compliance. This will allow those property owners to prove "non-conforming status," under which existing uses and buildings will be permitted to continue as is, even though they no longer comply with the Zoning Code.

One thing appears certain, the Riverfront IPOD, and zoning in general, along Pittsburgh's riverfronts will be an ongoing process. As this article is intended for general information purposes only, property owners who have questions about the new Riverfront IPOD should consult an attorney to determine how it may affect their property or their project. More information about the Riverfront IPOD, including a map that illustrates the properties affected, is also available at: <http://pittsburghpa.gov/dcp/zoning/ipod/ipod5>.

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