

**ACTION REQUEST FORM**

**DATE:** November 18, 2009  
**TO:** The Honorable Mayor and City Council  
**FROM:** A. Paul Norby, FAICP, Director of Planning

**COUNCIL ACTION REQUEST:**

Request for Public Hearing on Zoning Text Amendment proposed by City-County Planning Board staff

**SUMMARY OF INFORMATION:**

Text Amendment proposed by City-County Planning Board staff to amend Chapter B of the *Unified Development Ordinances* to incorporate the language adopted in State Senate Bill 1027 relating to the notification of property owners upon the filing of an application for a zoning map amendment. (UDO-209)

**PLANNING BOARD ACTION:**

**MOTION ON PETITION:** APPROVAL  
**FOR:** UNANIMOUS  
**AGAINST:** NONE  
**SITE PLAN ACTION:** NOT REQUIRED

## STAFF REPORT

DOCKET # UDO-209  
STAFF: [David Reed](#)

### **REQUEST**

This text amendment is proposed by City-County Planning staff to amend Chapter B of the *Unified Development Ordinances* to incorporate recently adopted language relating to the notification of property owners upon the filing of an application for a zoning map amendment.

### **BACKGROUND**

On June 26, 2009, the General Assembly of North Carolina adopted Senate Bill 1027 which clarifies the requirements for notification of the property owners in the event another party files a petition to rezone the property. G.S. 153A-343 and G.S. 160A-348 were amended by the Bill. The language in these statutes had been modified in 2005 and UDO-157 was adopted in 2006 to incorporate those and other changes to make the UDO consistent with North Carolina law.

### **ANALYSIS**

This text amendment updates the language in the UDO relating to the notification of property owners for an elected body public hearing to make it consistent with the new North Carolina requirements and also modifies the UDO requirements for Planning Board hearing notification to make it consistent with the new North Carolina requirements as well.

### **RECOMMENDATION**

### **APPROVAL**

### **PUBLIC HEARING**

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Wesley Curtis moved approval of the zoning map amendment.

SECOND: Clarence Lambe

VOTE:

FOR: Wesley Curtis, Carol Eickmeyer, Arnold King, Arthur King, Darryl Little, Lynne Mitchell, Paul Mullican, Brenda Smith

AGAINST: None

EXCUSED: None

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A. Paul Norby, FAICP  
Director of Planning

UDO-209

AN ORDINANCE PROPOSED BY PLANNING STAFF AMENDING CHAPTER B  
ARTICLE VI OF THE *UNIFIED DEVELOPMENT ORDINANCES*  
RELATING TO THE NOTIFICATION OF PROPERTY OWNERS UPON THE FILING  
OF AN APPLICATION FOR A ZONING MAP AMENDMENT

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

**Section 1.** Chapter B Article VI of the UDO is amended as follows:

## Chapter B - Zoning Ordinance

### Article VI – Administration and Amendments

#### 6-2 Ordinance Amendments: Zoning Text and Official Zoning Maps

##### 6-2.1 GENERAL USE DISTRICTS

**(F) Notice to Nonpetitioning Owners for a Planning Board hearing**

~~Except for petitions providing notification under the provisions of Section B.6-2.1(G)(2),~~  
~~if~~ a petition to amend the zoning is not signed by all of the owners of all land for which rezoning is requested, the following notification procedures shall be followed:

- ~~(1) **Written Notification.** The petitioner shall notify in writing nonpetitioning owners who have not signed the petition that the petition is being submitted. Written notification shall be by letter, in a form supplied by the Planning Board, and shall specify present and proposed zoning classifications. The letter shall be sent by certified or registered mail to the last known address of nonpetitioning owners.~~
- ~~(2) **Alternative Notification.** As an alternative method of notice, the petitioner may obtain the signatures of nonpetitioning owners on a statement acknowledging that said owners have received notice that a petition will be filed and heard at a public hearing before the Planning Board. In cases where signatures of nonpetitioning owners are obtained, written notification shall not be necessary.~~
- ~~(3) **Second Notification.** If for any reason the initial letter is not delivered, a second letter on the required form shall be sent by certified or registered mail to the nonpetitioning owner's address as shown on the records of the office of the Tax Assessor, if said address is different from the last known address.~~  
Except for a city or county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the Planning Board that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice

of public hearing. The person or persons required to provide notice shall certify to the Planning Board that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

**(G) Notification to Property Owners and Adjacent Property Owners for an Elected Body Public Hearing**

Notification to Property Owners and Adjacent Property Owners shall be handled as follows:

- (1)** Letters shall be sent via first class mail to all property owners within and adjacent to the property for which the zoning map amendment is requested, in accordance with State law, except as exempted under subsection (2) of this section. Except for a city or county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the elected board that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the elected board that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.
- (2)** The first class mail notice required under subsection (1) above shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the governing unit uses the expanded published notice provided for in this subsection. In this instance, a municipality or county may choose to either make the mailed notice provided for in subsection (1) of this section or may, as an alternative, elect to publish notice of the hearing as required in G.S. 160A-364 or G.S. 153A-323, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (1) of the section. Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (1) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city or county-initiated zoning map amendment.

- (3) In all cases of petitions to amend a zoning classification, the property shall be posted with a notice of public hearing by the Elected Body at least fifteen (15) days prior to the date of said public hearing. Said notice shall consist of a sign(s) posted on the property at a conspicuous location(s) or on an adjacent public street or highway right-of-way, which sign shall be legible from the nearest public road. Location(s) which are not conspicuous or require additional notification to the public will be required to have a directional sign(s) posted. The signs are and shall remain the property of the governmental agency which provided them, and shall be prepared, posted, and reclaimed by it. When multiple parcels are included within a proposed amendment, a posting on each individual parcel is not required, but there shall be sufficient signs posted to provide reasonable notice to interested persons.

**Section 2.** This ordinance shall become effective upon adoption.