



Certified Recommendation

Raleigh Planning Commission

CR# 11802

Case Information: TC-18-17 / Chapter 10 Amendments

Comprehensive Plan Guidance

<i>Applicable Policy Statements</i>	N/A
<i>Action Items</i>	N/A

Summary of Text Change

<i>Summary</i>	Amends the Part 10 Raleigh Unified Development Ordinance to increase the radius for mailed notice from 100 feet to 500 feet, amends language as a result of recent State legislation, and clarifies the voting required for the City Council to adopt a rezoning ordinance.
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Summary of Impacts

<i>Impacts Identified</i>	<p><u>Adoption of TC-18-17:</u></p> <ol style="list-style-type: none"> The adoption of the text change would increase the mailing radius for rezoning requests from 100 to 500 feet. This would apply to the notification for neighborhood meeting, Planning Commission public meeting and City Council public hearing. This text change would also align language in the UDO with State law. <p><u>No Action:</u></p> <ol style="list-style-type: none"> The existing regulations would remain. The mailing notification would remain at 100 feet. Provisions that conflict with State law would remain in the UDO; however, these conflicting provisions would not be enforced.
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Public Meetings

<i>Submitted</i>	<i>Committee</i>	<i>Planning Commission</i>
9/11/17		9/25/17 Recommend approval, 7-0

Attachments

- Draft Ordinance

Planning Commission Recommendation

<i>Recommendation</i>	Approval
<i>Findings & Reasons</i>	This text change would increase the mailing radius for rezoning notifications, which can engender additional public involvement in the rezoning process. Some of the amendments are necessary given changes to State law.
<i>Motion and Vote</i>	Motion: Terando Second: Jeffries Approval: Terando, Jeffries, Fluhrer, Hicks, Swink, Lyle, Braun

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report.

Planning Director

Date

Planning Commission Chairperson

Date

Staff Coordinator:

Travis Crane: travis.crane@raleighnc.gov



Zoning Staff Report – TC-18-17

Request

<i>Section Reference</i>	Part 10 Unified Development Ordinance Article 10.2
<i>Basic Information</i>	Amends the Part 10 Raleigh Unified Development Ordinance to increase the radius for mailed notice from 100 feet to 500 feet, amends language as a result of recent State legislation, and clarifies the voting required for the City Council to adopt a rezoning ordinance.
<i>PC Recommendation Deadline</i>	December 20, 2017

Comprehensive Plan Guidance

<i>Applicable Policies</i>	N/A While there are no specific policies contained within the 2030 Comprehensive Plan related to these changes, one of these amendments would align with the City's desire to broaden community engagement. An increase to the mailed notice radius will result in notification to many more citizens and property owners of pending rezoning matters.
<i>Action Items</i>	N/A There are no associated action items in the Comprehensive Plan related to these text changes. Staff routinely monitors changes in State law and will suggest text changes to the UDO to ensure that the zoning code is compliant with State law.

Contact Information

<i>Staff Coordinator</i>	Travis Crane: travis.crane@raleighnc.gov ; 919.996.2656
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History/Overview

This text change was requested in part by the City Council and in part by staff in the Department of City Planning. The City Council asked staff to explore an increase to the mailed notification radius for rezoning requests. Staff has previously gained authorization to amend other portions of language in Chapter 10 that conflict with State law. The changes proposed with this text change request are summarized as:

1. Increase to mailed notice radius for rezoning petitions. The current requirement is a distance of 100 feet from the subject property. The proposed change would increase the radius to 500 feet.

2. Removal of language related to protest petitions. State law was modified in late 2015 that removed the process of filing a protest petition associated with a rezoning request.
3. Removal of language that would require that a subdivision plan meet both the existing and proposed zoning requirements, should a subdivision be submitted during the pendency of a rezoning.
4. Alteration to title of the Department of City Planning. The department was recently rebranded from the Planning and Development Department. To the Department of City Planning. This also includes changes to the title of the Department director.
5. Clarification of language related to the City Council vote required to approve a rezoning request.

Purpose and Need

This text change would address a few needs identified by the City. The most substantial change would increase the mailed notice radius for rezonings from 100 feet to 500 feet. Other changes would address pending or recent changes to State law. The Legislature removed the allowance for protest petitions associated with rezoning cases. The current language in the UDO reflects the former allowance for protest petitions. Another potential change to the State law would make it clear that when a rezoning has been submitted, any subdivision plan is only required to meet existing zoning, and not reflect the proposed zoning.

Alternatives Considered

For those items related to changes in State Law, there were no other alternatives considered. For the most substantial change associated with this request, the City Council requested that the mailing radius be increased from 100 to 500 feet. State law provides the legal framework for notification of rezoning requests. State law requires that adjacent parcels, with no specific distance ascribed, be provided with mailed notice. Mailed notice must be delivered by first class mail. The distance for notification, both existing and proposed, meet or exceed the State law requirements. The specific distance is a question of policy for the City Council.

Scoping of Impacts

Potential adverse impacts of the proposed text change have been identified as follows:

Most of these changes are clarifying in nature. When the State Legislature adopts new statutes that relate to land use law, staff believes it important to amend the UDO to reflect these changes. If the UDO is not altered, staff would not enforce the language that is in conflict with State law. The largest impact related to this text change is the increase to the mailing radius for rezoning requests. The applicant provides stamped, addressed envelopes for all rezoning notifications. An applicant is required to send mailed notice on three occasions: prior to the neighborhood meeting, prior to the Planning Commission meeting, and prior to the City Council public hearing.

The adverse impacts of taking no action (retaining the existing regulations) have been identified as follows:

If this text change is not adopted, some provisions in the UDO would be in conflict with State law. Maintaining the language in its current state could cause confusion to staff and the public.

Impacts Summary

Adoption of Proposed Text Change

The adoption of the text change would have an impact on rezoning applicants, by requiring more stamped and addressed envelopes for mailed notice. The benefit of this increase is that more

property owners would receive direct mailed notice of a rezoning request. This could result in more public engagement. Updating the language related to State law will reduce confusion.

No action

The mailing radius for rezoning requests would remain at 100 feet. The City also advertises rezoning requests with a newspaper advertisement, posted sign on the property and notice on the website. The City will continue to follow State law; however, the UDO would not align with State law provisions.

The following list of considerations for the Planning and Development Officer's review and recommendations regarding a UDO text amendment application are not all-inclusive. Review and recommendations on UDO text amendments to this UDO by the Planning and Development Officer may consider whether:

1. **The proposed text amendment corrects an error or meets the challenge of some changing condition, trend or fact;**
Portions of this text change would correct language that does not align with State law or departmental structure.
2. **The proposed text amendment is in response to changes in state law;**
Some of these amendments are in response to State law.
3. **The proposed text amendment is generally consistent with the Comprehensive Plan and adopted area plans;**
The Comprehensive Plan does not contemplate the changes that are proposed; however, the idea of increased citizen engagement is consistent with a key focus area of the City Council's adopted strategic plan.
4. **The proposed text amendment does not conflict with any specific policy or action item of the Comprehensive Plan;**
This proposed amendments would not conflict with any specific policy or action in the Comprehensive Plan.
5. **The proposed text amendment is generally consistent with the stated purpose and intent of this UDO;**
The proposed amendments are consistent with the purpose and intent of the UDO.
6. **The proposed text amendment constitutes a benefit to the City as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time;**
These amendments would benefit the City as a whole. If adopted, the amendments would apply to all rezoning applicants and would foster an increase in citizen engagement.
7. **The proposed text amendment significantly impacts the natural environment, including air, water, noise, stormwater management, wildlife and vegetation; and**
This is not applicable.
8. **The proposed text amendment significantly impacts existing conforming development patterns, standards or zoning regulations.**
This is not applicable.

**ORDINANCE NO. 2017 – 762 TC 400
TC-18-17**

**AN ORDINANCE TO AMEND ARTICLE 10.2 OF THE PART 10 CODE
OF THE CITY OF RALEIGH TO AMEND THE MAILING RADIUS FOR
REZONING PUBLIC MEETINGS AND PUBLIC HEARINGS AND ALIGN
PROCESS REGULATIONS WITH STATE LAW**

WHEREAS, the intent of the Unified Development Ordinance for the City of Raleigh was to create more predictable development; and

WHEREAS, a public hearing is required prior to the adoption of a rezoning ordinance; and

WHEREAS, the public hearing is one of the venues for adjacent property owners to voice an opinion on a rezoning request; and

WHEREAS, the City of Raleigh utilizes many methods for notification of public meetings and public hearings, including direct mailed notice, posted signs, legal advertisements and posting on the City's web portal; and

WHEREAS, the current standard for mailed notification for public meetings and public hearings where a rezoning request is considered is 100 feet; and

WHEREAS, an increase to the notification standard would provide more opportunity for public input and engagement;

WHEREAS, the City of Raleigh will not bear an economic impact as a result of this increase to notification; and

WHEREAS, recent modifications to State Law require amendments to certain processes contained within Chapter 10 of the UDO.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH THAT:

Section 1. Section 10.2.1.C.1. Mailed Notice of the Raleigh Unified Development Ordinance is hereby amended by repealing the strikethrough text and replacing with the underlined text as shown below:

1. Mailed Notice

- a. Whenever mailed notice is required by *Sec. 10.1.8.*, at the time of submission of the application, the applicant shall deliver to City Planning and Development first class stamped envelopes addressed to the property owners of the property included in the proposed application and the owners of all property within 100 feet on all sides of the subject property

at the time of submittal. If a portion of a property is requested for rezoning, the notification radius shall be calculated from the property lines, and not the requested zoning boundary. For zoning map amendments, the mailing radius shall be increased to 500 feet. For zoning map amendments that directly affect more than 50 properties owned by a total of at least 50 different property owners, the applicant may elect to provide mailed notice of the Planning Commission public meeting by postcard instead of first class mail.

- b. When mailed notice is required for pre-submittal public meetings, the applicant may provide to the City return receipts from the mailing notification by the applicant to the required property owners by certified mail, returned receipt requested.
- c. Mailed notice shall be provided to all property owners as listed in the Wake County tax records that own property ~~within 100 feet of the application~~ at the time of submittal. Additionally, all property owners in the area of request shall receive mailed notice. ~~In calculating this 100-foot mailing radius, adjacent right of way shall not be counted, unless the right of way is at least 100 feet in width.~~
- d. Mailed notices must be sent to the addressees at least 10 calendar days prior and not more than 25 calendar days prior to the date of any public meeting.
- e. Except as otherwise directed by the City Council, the City Board or Commission reviewing the matter shall not require additional notification.
- f. For zoning map amendments that directly affect more than 50 properties owned by a total of at least 50 different property owners, the City may elect to forego mailed notice and instead give notice of the public hearing by publication provided that the newspaper advertisement is not less than ½ of a newspaper page in size. Property owners who reside outside of the newspaper circulation area, according to the addresses listed in the most recent property tax listing for the affected properties, shall be notified by first class mail.
- g. Except for a City-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 City Council 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 applicant shall certify to the City Council that proper notice has been provided in fact and such certification shall be deemed conclusive in the absence of fraud.

- h. Actual notice of the proposed amendment and a copy of the notice of public hearing shall be by any manner permitted under N.C. Gen. Stat. §1A-1, Rule 4(j).
- i. If notice with due diligence cannot be achieved by personal delivery, registered or certified mail or by a designated delivery service, notice may be given by publication consistent with N.C. Gen. Stat. §1A-1, Rule 4(j1). (See N.C. Gen. Stat. §160A-384).
- j. For quasi-judicial hearings, mailed notice shall be provided to all other persons with an ownership interest in the subject property as set forth in all applicable State and local laws.

Section 2. Section 10.2.4.F.5. City Council Action of the Raleigh Unified Development Ordinance is hereby amended by repealing the strikethrough text and replacing with the underlined text as shown below:

5. City Council Action

- a. Following the public hearing, revisions may be made to proposed conditions in conditional use zoning cases within 30 days following the public hearing date, provided that any change to any zoning condition is submitted to City Planning and Development at least 10 calendar days before the date of the City Council meeting.
- b. Following the public hearing, no changes to conditional zoning conditions permitted by the City Council may be made which are less restrictive, including but not limited to less setback, more dwelling units, greater height, more access points, new uses and fewer improvements. However, more restrictive conditions as well as a reduction in size of the zoning request and a change to a more restrictive zoning district may be made provided the revised conditional zoning conditions are signed by all owners of property covered by the public hearing zoning petition.
- c. Signed conditions may be submitted by facsimile or electronic mail so long as the original signed petition is received by the Planning Director and Development Officer at least 24 hours before the date of the meeting where final City Council action is taken; provided that the electronic signature is (1) unique to the person using it; (2) capable of certification; (3) under the sole control of the person using it; and (4) linked to the same page as the petition.
- d. Before taking final action, the City Council may consider the recommendations of the Planning Commission and Planning Director and Development Officer and comments made at the public hearing.

- ~~e.~~ Unless a valid protest petition has been submitted and received by the City in accordance with *Sec. 10.2.4.G.*, the City Council, by a simple majority vote shall approve, deny or send the proposed rezoning back to the Planning Commission for additional consideration.
- ~~e.~~ The City Council, by a three-fourths majority vote, may approve a proposed rezoning on first reading.
- ~~f.~~ If a motion to approve receives a simple majority vote, a second reading of the ordinance is required at a subsequent meeting. With a simple majority vote, the request may be denied, referred to a City Council subcommittee, or referred back to the Planning Commission for additional consideration.
- ~~f. g.~~ Approval by the City Council shall include the adoption of a statement describing whether the City Council considers the action taken to be consistent with the Comprehensive Plan and any other officially adopted plan that is applicable and briefly explaining why the action taken is reasonable and in the public interest.
- ~~g. h.~~ For general use rezonings, the City Council shall consider all the potential uses and standards which would be allowed under the proposed rezoning. The City Council is not allowed to consider specific site plans or conditions as a basis for such a decision. Following the public hearing, general use rezonings may at the discretion of the City Council be reduced in acreage and height and the City Council may substitute, in whole or in part, a more restrictive zoning district.
- ~~h. i.~~ All enactments, amendments and changes must be in the form of an ordinance. Copies of adopted city ordinances shall be kept on file at the office of the City Clerk.

Section 3. Subsection 10.2.4.G. shall be repealed in its entirety. Subsections 10.2.4.H, 10.2.4.I and 10.2.4.J shall be re-lettered accordingly.

Section 4. Subsection 10.2.5.C.1 shall be repealed in its entirety. Subsection 10.2.5.C.2 shall be renumbered accordingly.

Section 5. This section shall apply to applications that were submitted to and received by the City and that are subject to the mailed notice provisions contained in Section 10.2.1 of the UDO:

- a. This ordinance would increase the mailing radius for rezoning petitions. The neighborhood meeting notification, Planning Commission public meetings and City Council public hearings would have an increased mailing radius requirement.
- b. If a completed application has been submitted to the City prior to the effective date of this ordinance, the required mailed notice for all public meetings shall

comply with the regulations that were in effect prior to the effective date of this ordinance. Incomplete applications submitted prior to the effective date of this ordinance are not considered complete applications. If an incomplete application is supplemented to become complete after the effective date of this ordinance, Section 1 of this ordinance shall apply.

- c. For all pre-submittal neighborhood meetings described in Subsection 10.2.4.D of the UDO that occur after the effective date of this ordinance, the mailed notifications shall comply with Section 1 of this ordinance.

Section 6. All laws and clauses of laws in conflict herewith are repealed to the extent of such conflict. Notwithstanding any language in a zoning condition indicating administrative alternates are allowed, this ordinance hereby repeals such language.

Section 7. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 8. This text change has been reviewed by the Raleigh City Planning Commission.

Section 9. This ordinance has been adopted following a duly advertised public hearing of the Raleigh City Council.

Section 10. This ordinance has been provided to the North Carolina Capital Commission as required by law.

Section 11. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in N.C.G.S. §14-4(a) or similar limitations.

Section 12. This ordinance is effective 5 days after adoption.

ADOPTED: November 8, 2017
EFFECTIVE: November 13, 2017

DISTRIBUTION: Planning – Bowers, Crane, Mitchell, Hodge, Little, Reckhow
City Attorney – Seymour, Hargrove-Bailey
Development Services – Phyfer
Department Heads
Transcription Services – Taylor

Prepared by the Department of City Planning