

# Zoning Map Amendment Protest Petition Requirements

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# Questions to Consider

- What are the minimum requirements for noticing Zoning Map/Text Amendments and the minimum requirements for protest petitions as determined by North Dakota Century Code?
- How are other communities handling these requirements?

# Section 62-56(d). – Amendment process. (Relevant excerpts)

- 3) *“Protest. If a valid protest petition opposing an amendment is filed with the City Administrator, or a designee, by eligible property owners, a three-fourths vote of those members elected to the Board of City Commissioners is required for approval. A valid protest petition must meet the following criteria:*
- a. *Submission of the petition in the Office of the Building Inspector within 14 days after the conclusion of the public hearing on the amendment by the Planning Commission.*
  - b. *Notarized signatures by at least one of the following:*
    - 1. *The owner or owners of at least 20 percent of the property proposed for rezoning.*
    - 2. *The owners of 20 percent of the total area, excepting public rights-of-way and public property, within the zoning jurisdiction of the City and within 150 feet of the proposed rezoning.*

# ND Century Code: 40-47-04. Determining and enforcing regulations - Public hearing and notice thereof - Publication of regulations, restrictions, and boundaries.

The governing body of a city which uses zoning regulations shall provide for the manner in which the regulations and restrictions must be established, enforced, or supplemented, and for the manner in which the boundaries of the districts must be established and from time to time changed. A copy of each proposed regulation, restriction, or boundary must be filed with the city auditor. No regulation, restriction, or boundary may become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice must contain the following items:

- a. The time and place of the hearing.
  - b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
  - c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
  - d. A statement of the times at which it will be available to the public for inspection and copying at the office of the city auditor.
2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall cause notice of the same to be published in the official newspaper of the city. The notice must describe the nature, scope, and purpose of the regulation, restriction, or boundary and must state the times at which it will be available to the public for inspection and copying at the office of the city auditor.
  3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

# ND Century Code: 40-47-05. Amendments to or repeals of zoning regulations - Protest - Required vote for passage.

Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending one hundred fifty feet [45.72 meters] from the area to be changed, excluding the width of streets,

the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city. The provisions of section 40-47-04 relating to public hearings, official notice, and publication of regulations, restrictions, and boundaries shall apply equally to all changes or amendments provided in this section; provided, that protests in writing must be filed with the city auditor prior to the time set for the hearing.

What are other communities doing?

# Bismarck – Current Requirements

## **14-07-02. Amendments Procedure.**

7. Protest. If a protest petition against a change, supplement, modification, amendment or repeal of the zoning ordinance is filed and is signed by owners of twenty (20) per cent or more of the property immediately adjacent and within one hundred fifty (150) feet of the request, excluding street right-of-way widths, the amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the board of city commissioners. Otherwise said amendment shall not be approved or adopted without proceeding anew as in the case of a new amendment.

# Watford City – Current Requirements

## Article XXVI - Amendments

### Section 6. - PROTEST

1. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:
  - a) Of the area of lots included in such proposed change; or
  - b) Of the area adjacent, extending one hundred fifty feet (45.72 meters) from the area to be changed, excluding the width of the streets. The amendment shall not become effective except by the favorable vote of three-fourths of all members of the City Council, provided that protests in writing must be filed with the City Auditor within seven (7) days from the recommendation of the Planning Commission. If no protest is filed, a majority decision of the City Council shall be sufficient.

# Williston – Current Requirements

## Section Z-29. Amendments

### C. Public hearings.

Protests. Any party may appear at the Planning and Zoning Commission Public Hearing or the City Commission Public Hearing in person or by agent or attorney. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of 20% or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending 150 feet from the area to be changed, excluding the width of streets.

The amendment shall not become effective except by the favorable vote of three-fourths of all members of the City Commission.

# Grand Forks – Current Requirements

## Article 10. - Amendments

### Section 18-1001. Zoning maps and zoning regulations.

- 4) Upon the filing of such report, the city council shall hold such public hearings upon the amendments as it deems advisable; however, at least one (1) public hearing thereon shall be conducted and at least fifteen (15) days' notice of the time and the place of such hearing shall be published in the official newspaper of the city. After the conclusion of the hearing or hearings, the city council may adopt the amendment or any part thereof in such form as it deems advisable. The votes necessary to adopt such an amendment shall be:
  - A. No amendment to the text of this chapter, except as provided in subsection (4)(B) below, shall become effective except by the favorable vote of the majority of the members of the council present.
  - B. No amendment to the zoning map to rezone any property or to alter or modify the uses permitted in any zoning district shall become effective except by the favorable vote of three-fourths ( $\frac{3}{4}$ ) of all of the members of the city council or, if less than three-fourths ( $\frac{3}{4}$ ) of all members of the city council are in attendance, by the unanimous vote of all those present.

# Findings

- North Dakota Century Code outlines the process for a protest petition regarding zoning map amendments.
- The City currently meets the minimum requirements for noticing and protest petitions for zoning map amendments as outlined by NDCC. The notice by petition is the only addition not required by NDCC.
- Alternative: Similar to Grand Forks, potentially could require a three-fourths vote for approval of all zoning map amendments. May delay future rezoning projects.

# Suggestion:

e) *“Required notice and publication for rezoning, special use permits, and text amendments.*

1) *Notice of public hearings—Rezoning, special use permits. Prior to consideration of a rezoning or special use permit, notice of public hearings shall be provided by the following methods, ~~as determined by the City:~~*

- a. *Publication. At least 15 days before the date of hearing, the Zoning Administrator shall have published in a daily newspaper having a general circulation in the City a notice of the time, place and subject matter of such hearing.*
- b. *Notification by mail. At least ten days prior to the date of hearing, the party initiating the rezoning request shall present the Zoning Administrator a certified address list of those persons who own property within 300 feet of the subject site. The Zoning Administrator shall mail notice of the time, place and subject matter of the hearing to such property owners at least ten days prior to the date of the hearing.*
- c. ~~*Notification by petition. The applicant shall acquire the signatures of the owners of all properties within 200 feet of the property line in question indicating their approval of the proposed rezoning.*~~

2) *Notice of public hearings—Text amendments. Prior to consideration of a text amendment, notice of public hearings shall be provided by publication as provided in Subsection (d)(1) of this section.”*

# Suggestions

- 3) *“Protest. If a valid protest petition opposing an amendment is filed with the City Administrator, or a designee, by eligible property owners, a three-fourths vote of those members elected to the Board of City Commissioners is required for approval. A valid protest petition must meet the following criteria:*
- a. *Submission of the petition ~~in the Office of the Building Inspector to the City Administrator or designee~~ within 14 days after the conclusion of the public hearing on the amendment by the Planning Commission.*
  - b. *Notarized signatures by at least one of the following:*
    - 1. *The owner or owners of at least 20 percent of the property proposed for rezoning.*
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Comments? Questions?