



City Council Report

DATE: August 21, 2017
TO: Mayor and City Council
THROUGH: Karolyn Kent, Assistant City Manager
FROM: Christine Zielonka, Development Services Director
John Wesley, Planning Director
SUBJECT: **Conditions Requiring Mandatory Supermajority Vote by City Council –**
Proposed amendments to Section 11-67-4 E the Zoning Ordinance regarding
written protest requirements to trigger a supermajority vote by the City
Council to approve a land use action

PURPOSE AND RECOMMENDATION

To be consistent with recent changes in State Statutes, consider an amendment to the zoning ordinance that would modify the conditions requiring a supermajority vote by City Council to approve a land use action. To comply with state statutes, staff recommends approval of the changes described below and contained in the attached draft ordinance.

This item was reviewed and considered by the Planning and Zoning Board at their July 19, 2017 meeting. The Board supported this revision and recommended approval.

BACKGROUND AND DISCUSSION

State statutes and our local zoning ordinance provide a mechanism for property owners surrounding a proposed rezoning to have their protest affect the number of Councilmembers needed to approve the land use action. The Mesa Zoning Ordinance (MZO) standards apply the same rules to council use permits, development unit plans, site plans, and site plan modifications.

Under these rules, contained in Section 11-67-4 E of the MZO, if a sufficient number of property owners within a prescribed area around a location that is subject to a land use action going to the City Council protest in writing to the proposed action, it then requires at least 3/4 of the Council to vote in favor of the action for it to be approved. This written protest is often referred to as “legal protest.” Because the Council consists of seven members, 3/4 of that number is 5.25, which has always been rounded up to say it takes 6 members to approve a case for which a legal protest has been filed.

In the 2017 Legislature, a bill was passed that changed the rules for determining a legal protest. We are now obligated to bring our ordinance in line with the changes made to the state statute. A summary of the changes are:

- The required number of votes is to be rounded to the nearest whole number. This means that the 5.25 (3/4 of 7) will be rounded down to require five votes for approval rather than up to six as we have previously done.
- The three criteria that must be met to force the higher vote are reduced to two.
- The protest percentage will be figured on all the property in and surrounding the subject site as a whole, including any right-of-way, rather than excluding the right-of-way and calculating the percentage on each side individually.
- The 20% area calculation is based on area and number of lots, tracts, and condominiums within the zoning area as defined in ARS Section 9-462.04.
- The signed, written protest must be filed in the City Clerk's office; previously it was filed with the Planning Director.

The effect of the changes to State Statute, that are now being incorporated into our ordinance, is to reduce the likelihood of those protesting a land use action to achieve a "legal protest" and when they do the votes required for approval is reduced from six to five.

State statutes only provide for the opportunity for "legal protest" with regards to rezoning. Our ordinance also allows for the same opportunity with other land use actions (Council Use Permits, Development Unit Plans, Site Plans, and Site Plan Modifications) that go to the City Council. We are not proposing to change this provision.

RECOMMENDATION

The Planning and Zoning Board and staff recommend amending the code as described in this report and reflected in the attached ordinance for consistency with State Statutes.