

## Public Review of the Mailed Rezoning Notice Text Amendment

### Public Review Draft 03/19/2018

This document contains a redlined draft of the Proposed Mailed Rezoning Notice Text Amendment which has been released for public comment on 03/19/2018. Comments on the Public Review Draft may be received at any time throughout the Public Adoption Process, however comments sent prior to the Planning Board Public Review Draft will be included in the Planning Board packet and considered by staff prior to the Planning Board Review Draft.

Please send all comments to [PlanningServices@denvergov.org](mailto:PlanningServices@denvergov.org). For more information on the proposed text amendment, please visit [www.denvergov.org/textamendments](http://www.denvergov.org/textamendments).

#### Redline Draft Conventions:

- Text to be deleted is shown in ~~red strikethrough~~
- Text to be added is shown in red underline
- Additional pages with no proposed changes are included in the Public Review Draft to provide relevant context to the proposed amendments.
- Items related to page numbers, page headers, graphics, cross references, figure numbers and other related items may be incorrect and will be corrected when the final amendment is “cleaned” for filing. Please do not focus your comments on correcting these matters.
- Additionally, please note that coordination will continue throughout the process to ensure constancy of approach and administration with other ongoing text amendments.

rezoning land into a new zone district be approved until the text amendment creating the new zone district is approved.

#### **12.3.3.10 Modification of a Pending Application**

With the Manager's approval, a pending application may be modified at the applicant's request at any time before public notice of a public hearing, as applicable, is given. After public notice for a public hearing has been given, the applicant may request modifications to the application at the public hearing, which the review- or decision-making body may accept as conditions of approval.

#### **12.3.3.11 Withdrawal of Pending Applications**

- A. Except where otherwise expressly provided (e.g., see Section 12.3.3.12, Inactive Applications), only the applicant may withdraw an application. The applicant shall request the withdrawal in writing, and after such withdrawal, the Manager will not take further action on the application. To re-initiate review after withdrawal, the applicant shall resubmit the application, which in all respects shall be treated as a new application for purposes of review, scheduling, and payment of fees.
- B. Withdrawal from consideration of an application from a public meeting or hearing agenda is discretionary with the applicable review or decision-making body.

#### **12.3.3.12 Inactive Applications**

Except as otherwise expressly stated in this Code or in any supplementary rules or regulations for administering this Article 12, the following provisions shall apply to inactive applications:

- A. The Manager shall notify the applicant in writing that an application is considered inactive and will be automatically withdrawn unless the applicant takes action to revive the application according to the Manager's direction within thirty (30) days, if at any point in a review process either:
  1. The Manager has notified the applicant that additional or corrected materials are required, and the applicant has not submitted such materials or responded with a request for a reasonable extension within 45 days after the date of such notification; or
  2. As applicable, the applicant has not responded to a staff report, or has not agreed to a date for a required meeting or hearing before the Planning Board, City Council, or Board of Adjustment, or has not given proper public notice as required by this Code, or has not taken other affirmative steps within a reasonable time frame that is within the applicant's control and is necessary to advance the application for a final determination.
- B. No further processing of an inactive application shall occur until the deficiencies are corrected and the application revived. If the applicant does not correct the deficiencies or take other substantial action to address the deficiency within the 30-day correction period, the inactive application shall be considered automatically withdrawn. Any re-submittal of the application thereafter by the applicant will be treated as a new application for purposes of review, scheduling, and payment of application processing fees.

### **SECTION 12.3.4 PUBLIC NOTICE REQUIREMENTS**

#### **12.3.4.1 General Provisions and Intent**

All applications that require public hearings before the Planning Board, the Board of Adjustment, or the City Council shall be subject to this Section's public notice of hearing requirements. In addition, certain applications require public notice of receipt of such application and/or notice of the final decision or appeal opportunities. Public notice is intended to provide an the opportunity for public participation or public information regarding land use and development applications under this Code.

#### 12.3.4.2 Types of Public Notice

There are two types of public notice addressed by this Section:

##### A. Notice of Public Hearings

When required by Section 12.2.9, Summary Table of Authority and Notice, “Notice of Public Hearings” provides the public with advance notice of a required hearing at which a review- or decision-making body will take action on an application under this Code. Such notice may be provided in writing (mailed), by posting (signs), or by publication.

##### B. Informational Notice

When required by Section 12.2.9, Summary Table of Authority and Notice, “Informational Notice” provides the public with notice of Community Planning and Development's receipt of an application for review (e.g., a zoning permit or site development plan), and/or the approving authority's final decision on such application and available avenues for appeal. Such notice may be provided in writing (mailed) and/or by posting (signs).

#### 12.3.4.3 Public Notice – When Required

Required public notices are summarized in the table shown in Section 12.2.9, Summary Table of Authority and Notice. More detailed information may be included with each specific zoning procedure described in Division 4 of this Article 12.

#### 12.3.4.4 Notice of Public Hearing

##### A. Written Notice of Public Hearings

When required by Section 12.2.9, Summary Table of Authority and Notice, written notice of a public hearing shall be provided in compliance with the following standards:

##### 1. Official Map Amendment (Rezoning) - Written Notice of Planning Board Public Hearings

- a. No later than 15 days before a required Planning Board public hearing on a proposed official map amendment (rezoning), the Manager shall notify the following parties:
  - i. The city council members in whose district the subject property is located.
  - ii. The at-large city council members.
  - iii. Registered neighborhood organizations registered according to D.R.M.C. Section 12-94 whose boundaries encompass or are located within 200 feet of the proposed official map amendment (rezoning).
  - iv. The owners of any real property located in whole or in part within, or within 200 feet of, the proposed official map amendment (rezoning).

##### 2. All Other Applications - Written Notice of Planning Board Public Hearings

- a. Except for an official map amendment (rezoning) application, No later than 15 days before a required Planning Board public hearing on an application, the Manager shall notify the following parties:
  - i. ~~The~~ The city council members in whose district the subject property is located,
  - ii. ~~and the~~ at-large city council members.
  - iii. ~~In addition, if the subject application affects areas within, or within 200 feet of, a registered neighborhood organization's boundaries, the Manager shall notify such registered neighborhood organizations registered according to D.R.M.C. Section 12-94.~~ Registered neighborhood organizations registered according to D.R.M.C. Section 12-94 whose boundaries encompass or are located within 200 feet of the proposed application.

**3. Written Notice of City Council Public Hearings**

No later than 21 days before a required City Council public hearing on an application, the Manager shall notify the city council members in whose district the subject property is located and the at-large city council members. In addition, if the subject application affects areas within, or within 200 feet of, a registered neighborhood organization's boundaries, the Manager shall notify such registered neighborhood organizations registered according to D.R.M.C. Section 12-94.

**4. General Requirements**

- a. The notice shall be sent via U.S. mail first class or by electronic mail if the recipient has indicated their acceptance of notice by electronic mail.
- b. Notification shall include, where applicable, the location and general description of the proposed action; the process to be followed, including the date, time and place of the scheduled public hearing and/or public meeting.

**5. Minor Defects in Notice Do Not Impair Hearing**

Minor defects in a notice shall not impair the notice or invalidate proceedings under the notice if a *bona fide* attempt has been made to comply with applicable notice requirements. Where written notice was properly mailed, failure of a party to receive written notice shall not invalidate any subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing and the location of the subject property shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the review or decision-making body shall make a finding regarding whether there was substantial compliance with the notice requirements of this Code before proceeding with the hearing.

**B. Posted Notice of Public Hearings**

When required by Section 12.2.9, Summary Table of Authority and Notice, posted notice of a required public hearing shall be provided in compliance with the following standards:

1. No later than 15 days prior to the required Planning Board public hearing, and no later than 21 days prior to the required City Council public hearing, the applicant shall be responsible for posting signs on the subject property providing public notice thereof.
2. Posted notice shall be in number, size, location, and content as prescribed by the Manager and shall indicate the time and place of the public meeting or hearing, and any other information prescribed by the Manager.
3. The applicant shall take all reasonable efforts to assure that posted signs remain on the site in the number and location prescribed by the Manager, and in good condition to maintain legibility, during the posting period.
4. Posted notices shall be removed by the applicant from the subject property no later than 15 days after the public hearing has been held. Failure to do so shall constitute a violation of this Code.

**C. Published Notice of City Council Public Hearing**

No later than 21 days prior to the required City Council public hearing, the Office of the City Council, together with the Denver City Clerk's Office, shall publish notice of the time and place of a required public hearing before the City Council in the official newspaper.

**12.3.4.5 Informational Notice – General Provisions****A. Written Notice of Receipt of Application**

When required by Section 12.2.9, Summary Table of Authority and Notice, written notice of receipt of application shall be provided in compliance with the following standards:

**1. Official Map Amendment (Rezoning) - Timing of Notice**

For an official map amendment (rezoning) application, Community Planning and Development shall cause written informational notice to be provided no later than 10 days after the determination that a complete application has been received in accordance with Section 12.3.3.8, Determination of Complete Application. Community Planning and Development shall cause written informational notice to be sent to the following parties:

- a. The city council members in whose district the subject property is located;
- b. ~~to~~ The at-large city council members;
- c. ~~and to those neighborhood organizations registered according to D.R.M.C. Section 12-94, whose boundaries encompass or are within 200 feet of the proposed development. Registered neighborhood organizations registered according to D.R.M.C. Section 12-94 whose boundaries encompass or are located within 200 feet of the proposed official map amendment (rezoning).~~
- d. The owners of any real property located in whole or in part within, or within 200 feet of, the proposed official map amendment (rezoning).

**2. All Other Applications - Timing of Notice**

Except for an official map amendment (rezoning) application, no later than 10 days after receipt of a complete application, Community Planning and Development shall cause written informational notice to be sent to the city council members in whose district the subject property is located, to the at-large city council members, and to those neighborhood organizations registered according to D.R.M.C. Section 12-94, whose boundaries encompass or are within 200 feet of the proposed development.

**3. Notice to Landmark Preservation Commission**

If the subject property falls within an area designated as a structure or district for preservation according to the D.R.M.C., Chapter 30 (Landmark Preservation), Community Planning and Development shall notify the Denver Landmark Preservation Commission regarding the application within the same time periods specified in paragraphs 1 and 2 above.

**4. General Rules**

- a. The informational notice shall be sent via U.S. mail first class or by electronic mail if the recipient has indicated their acceptance of notice by electronic mail.
- b. Notification shall include the location and general description of the application and proposed action; and the process to be followed, including the date, time and place of any related public meeting or hearing, if such has been scheduled; and information concerning, as applicable, when and where written comments may be submitted.
- c. The failure of any real property owner or a registered neighborhood organization, for whatever reason, to receive a notification required hereunder shall not invalidate any final action by the city.

**B. Posted Notice of Receipt of Application**

When required by Section 12.2.9, Summary Table of Authority and Notice, posted notice of receipt of an application shall be provided in compliance with the following standards:

1. No later than 10 days after receipt of a complete application, the applicant shall post the subject property in a conspicuous location for 10 days with a sign or sign template provided by Community Planning and Development. The start of the 10-day period shall be the first day of the posting of the sign.
2. Such sign shall describe the proposal, give directions for submitting comments to Community Planning and Development within 30 days from the beginning of the posting

period, and state that any final decision to approve the application shall be posted at the same location for 15 days as soon as it is effective.

3. Posted notices shall be removed by the applicant from the subject property by no later than 15 days after the end of the posting period. Failure to do so shall constitute a violation of this Code.

#### **C. Posted Notice of Final Administrative Action**

When required by Section 12.2.9, Summary Table of Authority and Notice, posted notice of final administrative action on an application shall be provided in compliance with the following standards:

1. Within 7 days after reaching a final decision to approve an application subject to informational notice, Community Planning and Development shall cause the applicant to post the property with a copy of the approving decision for a period of 15 days.
2. The applicant shall post the property in a conspicuous location with a sign or sign template provided by Community Planning and Development.
3. The effective date of the final administrative action and the start of the 15-day period during which appeals may be made to the Board of Adjustment shall be the first day of the posting of the sign. Such sign shall describe how an appeal from the final administrative decision may be filed and state that any appeal must be filed within 15 days, and shall provide contact information for obtaining the standards and criteria that will govern the appeal.

### **SECTION 12.3.5 EFFECT OF APPROVED APPLICATIONS, PLANS AND PERMITS**

All applications, plans and permits approved under this Article 12 and this Code shall be binding upon the applicants, their successors and assigns, shall limit and control the issuance and validity of all subsequent site development plans and zoning permits, and shall restrict and limit the construction, location, use, and operation of all land and structures in accordance with such plans or permits. See also Section 12.3.7, Modification and Amendment of Approved Applications, Plans and Permits, below.

### **SECTION 12.3.6 LAPSE OF APPROVAL PROVISIONS AND EXTENSION OF APPROVAL PERIOD**

#### **12.3.6.1 In General - Lapse of Approved Applications, Plans and Permits**

An application, site development plan, or zoning permit approved under this Code may lapse if certain actions related to the approved application are not taken within a specified time period as set forth in Division 12.4, Zoning Application and Review Procedures. Specific actions that must be taken with regard to each application, plan or permit to avoid lapsing of the approval are set forth in Division 4 of this Article for each type of zoning application.

#### **12.3.6.2 Beginning of Approval Period - General Rule**

Unless otherwise specified in Division 4 of this Article 12, the approval period of an approved application, plan or permit, after which lapse will occur, shall begin on the date of the decision-making body's final action, which shall be interpreted to mean:

- A. Except as stated in Section 12.3.6.2.B regarding site development plans, for approved plans or permits that this Code requires to be recorded: the date of recordation.
- B. For all other approved applications, plans or permits, including site development plans: the date of the decision-making body's final action, which shall be affixed to all approved applications, plans or permits.