



City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 4, 2010

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES K. HARTMANN, CITY MANAGER 

FROM: FAROLL HAMER, DIRECTOR 
DEPARTMENT OF PLANNING AND ZONING

SUBJECT: POTENTIAL AMENDMENT TO CITY CHARTER AND ZONING
ORDINANCE FOR PROCESSING MASTER PLAN AMENDMENTS

ISSUE: Whether to take the appropriate steps to amend the Charter and Zoning Ordinance with regard to the processing of master plan amendments.

RECOMMENDATION: That City Council retain the current system for the processing of master plan amendments and not seek a change to the City Charter.

DISCUSSION: On May 25, Council considered Councilwoman Hughes' proposal to change the master plan amendment process. Council discussed the issue and asked staff to review it, discuss it with the Planning Commission and report back in June to Council. Attached is staff's memorandum to the Planning Commission setting out the history of the process, including prior charter changes, with examples for master plan cases from the past. It includes prior memoranda to Council from the current and prior City Attorneys on the subject.

On June 3, the Planning Commission considered the proposal by Councilwoman Hughes and stated that it thought the memoranda of Planning staff and the City Attorneys' outlined the issue very well. Chairman Komoroske explained that the master plan is a document reflecting a long term policy for the City that should be stable, insulated from the political process, and difficult to change.

The Commission voted to support Planning staff's recommendation to retain the current system and procedures for master plan amendments. The motion carried on a vote of 6 - 1, with Mr. Jennings voting against.

ATTACHMENT: June 1, 2010, memorandum from Director Hamer to Planning Commission, with attachments

STAFF:
Barbara Ross, Deputy Director, Planning and Zoning

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 1, 2010

TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION

FROM: FAROLL HAMER, DIRECTOR, PLANNING AND ZONING *FH*
JAMES BANKS, CITY ATTORNEY

SUBJECT: POTENTIAL AMENDMENT TO THE CITY CHARTER AND
ZONING ORDINANCE FOR PROCESSING MASTER PLAN
AMENDMENTS

At its meeting on May 25, City Council asked planning staff to review a suggestion regarding the processing of master plan amendments, discuss it with the Planning Commission and report back to Council in June.

Proposal: Councilwoman Hughes has suggested that the City amend the City Charter and Zoning Ordinance to allow City Council to consider and approve a master plan amendment, even if the Planning Commission has not acted favorably on it and Council has not initiated it. Under her proposal, Council would hear all master plan amendments regardless of the action taken by the Planning Commission, and be able to approve them by simple majority vote.

Councilwoman Hughes' proposal is contained in a memorandum to Council dated May 19, 2010 and attached here. Also attached is the City Attorney's memorandum of April 7, 2010 outlining in some detail the current procedures, as set forth in the City Charter and Zoning Ordinance, and the provisions that would have to be changed if the City decides to pursue this proposal.

History: In 1994, the City Charter was amended to allow City Council to overrule a negative decision on a master plan amendment by the Planning Commission if two requirements are met. First, Council must initiate the master plan amendment prior to the Planning Commission's consideration; second, Council must approve the master plan amendment by a supermajority (3/4 of Council or six affirmative votes). See Charter, section 9.07.1. Prior to that Charter change, if the Planning Commission acted to disapprove a master plan amendment, the amendment could not legally be considered by Council.

Rationale for the Current Procedure.

The 1994 Charter change struck a balance between retaining the Commission's historic planning function on the one hand, and allowing a method by which Council could consider master plan amendments, but only in those circumstances where sufficient interest and support existed to overrule the Commission's traditional function.

As explained in the attached two memorandums from the City Attorney's Office from 1993, the scheme reflected in the City's charter – both before and after the 1994 Charter change – is consistent with state law, the procedures in other Virginia jurisdictions, and the 1928 Standard City Planning Enabling Act, which is the basis for planning and zoning practice in this and most other jurisdictions. Thus it is the Planning Commission that is the body recognized as bringing the professional and technical knowledge to bear on the making of decisions concerning the physical development of the City.

While the City Council may be the ultimate maker of laws, and each master plan amendment requires Council action to become valid, in the case of changes to the City's master plan, the current system creates careful checks and balances, ensuring that long term planning, as reflected in the master plan, is not easily changed. To change this arrangement would constitute a fundamental philosophical shift in the roles of the participants in the City's land use decision-making system. Staff has researched prior master plan amendments and does not see that the history warrants a change.

History of Master Plan Amendment Denials

Staff reviewed the City's master plan cases over the last 18 years and found four examples where the Planning Commission has denied an application for a master plan amendment:

MPA #94-0001	Potomac Yard/Piggyback Yard
MPA #94-0004A	Filmore/Dawes
MPA #98-0002	King Street Metro Plaza
MPA #99-0008	407-409 East Raymond

In addition, staff is aware of only one case where City Council initiated a master plan amendment: in 1996 when the master plan and zoning of the Route 1 Jack Taylor site were changed to allow the current dealership development. However, in that case, the Planning Commission approved the master plan amendment.

Recommendation

Staff supports the current system and procedures for master plan amendments as appropriate and seeks comments from the Planning Commission so that staff may forward them to City Council.

Staff: Barbara Ross, Deputy Director, Planning and Zoning
Joanna Frizzell, Assistant City Attorney

- Attachments:
1. City Attorney memoranda, September 7 and December 9, 1993.
 2. City Attorney memorandum, April 7, 2010.
 3. Memorandum from Councilwoman Hughes to City Council, May 19, 2010

M E M O R A N D U M

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: PHILIP G. SUNDERLAND
CITY ATTORNEY *PGS*

IGNACIO BRITTO PESSOA
ASSISTANT CITY ATTORNEY *IBP*

DATE: SEPTEMBER 7, 1993

SUBJECT: PROCESSING OF MASTER PLAN AMENDMENTS

Section 9.01 of the city charter gives council the authority to adopt by ordinance a master plan for the city. The master plan is to include land use, transportation, capital improvement, and other elements to guide the growth and development of the city. Council's authority, however, is constrained by the substantial role in the adoption process which §§ 9.04 and 9.05 give to the city planning commission.

Section 9.04 imposes on the planning commission the initial duty to draft the master plan. Section 9.05 requires the commission to review the plan, and prepare any necessary amendments thereto, "from time to time at intervals not exceeding five years." In the former case, the master plan must be approved by the commission and forwarded by it to council before council can act to adopt the plan. In the latter case, an amendment must be approved by the commission and forwarded to council before council can act upon the amendment. In both cases, once it has jurisdiction, council can alter or amend the plan or amendment within the general confines of the planning commission approval.

Thus, once the master plan has been adopted, no amendment may be made without the substantial agreement of the planning commission, and the commission is under no legal duty even to consider any amendments, except at its statutorily mandated five year review. Even then, it has no duty to forward any amendment to council, if it determines that none is appropriate.

The legislative scheme set out in the charter and described above is mirrored in the general law. Virginia Code § 15.1-446.1 requires the planning commission in every jurisdiction to prepare a comprehensive plan. The commission is required to hold a public hearing on the plan and "may approve, amend and approve, or disapprove the plan. Upon approval of the plan, the commission shall recommend the plan to the governing body." Va. Code § 15.1-448. Thereafter, the governing body may "approve and adopt, amend and approve, or disapprove" the plan. Va. Code § 15.1-450. "At least once every five years the comprehensive plan shall be reviewed by the [planning] commission to determine

whether it is advisable to amend the plan." Va. Code § 15.1-454. If the governing body desires an amendment in the interim, it may require the planning commission to consider the amendment. Va. Code § 15.1-453. Nothing in the general law, however, requires the commission to approve such an amendment, and absent such approval, and the consequent recommendation of the commission, the governing body is without jurisdiction to adopt the amendment.

This scheme is repeated in many of the charters provided for other cities in the Commonwealth. Indeed, under the Richmond Charter, it appears that the council can accept or reject, but cannot amend, the plan as approved by the commission.

The rationale for imposing these procedural impediments on amendments to the master plan, or comprehensive plan as it is also known, is to assure that the plan, once adopted, enjoys that degree of permanence and long range stability intended by the legislature. See, 1 Zeigler, Rathkopf's The Law of Zoning and Planning, § 12.03[1]. The planning commission's pivotal role is intended to bring professional and technical knowledge to bear on the making of political decisions concerning the physical development of the community. See Bell v. City of Elkhorn, 364 N.W.2d 144 (Wis. 1985). We note that, as envisioned by the Standard City Planning Enabling Act, published by U.S. Department of Commerce in 1928, which served as a model for planning legislation in many states, including Virginia, the local governing body had no role in the adoption of a master plan, which under the Enabling Act is the exclusive province of the commission. The history of Enabling Act's provision conferring planning authority on the commission is related in the attached excerpt from Anderson, American Law of Zoning, 3d.

The only exception in Virginia, of which we are aware, is set out in the Charter of the City of Falls Church. Section 17.06 of that charter, adopted like Alexandria's in 1950, was amended in 1960 to provide that:

Amendment of the master plan may be initiated by a majority vote of the city council to submit a proposed amendment to the planning commission. If the planning commission disapproves the proposed amendment, the council shall have power to overrule such action by the affirmative vote of not less than five (5) members. Failure of the planning commission to act within sixty (60) days from the date of the official submission to it shall be deemed approval; provided, however, that the sixty (60) days limitation may be extended by resolution of the city council for a period not to exceed a

total of one-hundred and twenty (120) days.
[emphasis added]

We would be pleased to prepare a similar charter change for inclusion in the upcoming legislative package should council so desire.

sad

Attachment

cc: The Chairman and Members
of the Planning Commission (w/attachment)

Vola Lawson (w/attachment)
City Manager

Sheldon Lynn (w/attachment)
Director of Planning and Community Development

AMERICAN
LAW OF
ZONING
3d

by
Robert M. Anderson
Professor of Law, Emeritus
College of Law, Syracuse University



§§ 22.01-31.06

1986



THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, New York 14694

BANCROFT-WHITNEY CO.
San Francisco, California 94107

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acts provide for piecemeal adoption, and further require that the plan be prepared to permit adoption by the legislative authority in whole or in part. A New Jersey statute authorizes piecemeal adoption by a municipal planning board,⁴⁶ and the same procedure is authorized in Connecticut.⁴⁷

§ 23.12. —Adopting authority.

Planning-enabling acts differ fundamentally in their selection of the adopting authority. The Standard City Planning Enabling Act⁴⁸ and the Model Planning Enabling Act drafted by Bettman⁴⁹ name the planning commission as the adopting authority. The draftsmen of the Standard Act explained that the plan was intended to guide development for a period of time longer than the term of any councilman and that no councilman was representative of the people beyond his term. Moreover, it was urged that the plan was not legislation designed to meet immediate needs, but a guide to future development.⁵⁰

It seems likely that the decision against adoption by the council was motivated more by a lack of confidence in municipal legislative bodies than by so nice a distinction between planning and legislation, or so great a concern for acts of council which might have effect beyond the term of office of any member. Whatever may be the merits of keeping the plan wholly within the scope of planning commission powers, some states continue to follow this pattern.⁵¹

Where the adopting authority is in the commission, rather than in the legislative body of the municipality, the comprehensive plan is viewed more as a guide to the work of the planning board than as a limitation upon land use, or upon the power of the legislative body to act in relation to the development of land.

46. 6 NJ Sess Laws '75 Ch 291 § 19a, NJ Stat Anno Title 40:55D-1 et seq.

47. Conn Gen Stat § 8-23.

48. Standard City Planning Enabling Act § 8 (1928).

49. Bassett et al, Model Planning Laws p 77 (1935).

50. Kent, The Urban General Plan p 57 (1964).

51. 6 NJ Sess Laws '75 Ch 291 § 19a, NJ Stat Anno Title 40:55D-1 et seq; NY Town L § 272a; Ohio Rev Code Anno § 713.02.

See also O'Loane v O'Rourke, 231 Cal App 2d 774, 42 Cal Rptr 283 (1965, 2d Dist) (a general plan for all future development within a city was held to be legislative in nature and therefore subject to adoption by referendum).

However, a subsequent section will show that the adoption of a plan by a commission may nevertheless have some legal effect.⁵²

Many enabling acts depart from the pattern of the Standard Act by authorizing the planning commission to prepare and recommend a plan, power to adopt it being vested in the legislative body. For example, an Illinois statute empowers the planning department "(1) To prepare and recommend to the corporate authorities a comprehensive plan for the present and future development or redevelopment of the municipality. Such plan may be adopted in whole or in separate geographical or functional parts, each of which, when adopted, shall be the official comprehensive plan, or part thereof, of that municipality."⁵³

Another Illinois statute provides: "An official comprehensive plan, or any amendment thereof, or addition thereto, proposed by a plan commission shall be effective in the municipality and contiguous area herein prescribed only after its formal adoption by the corporate authorities."⁵⁴

Recommendation by the planning commission and adoption by the legislative authority is contemplated by the California enabling statutes.⁵⁵

Provisions for legislative adoption apparently are intended to give formal legal status to the comprehensive plan. Such adoption may advance the purposes of the plan by bringing its substance forcibly to the attention of the legislators, and by gaining their formal commitment to it. On the other hand, the legislative step in the process may tend to underscore political considerations at an early point, and may render the process of continuous revision a difficult one.

The potential rigidity which may result when the comprehensive plan must be adopted and amended by legislative process is exemplified by a California decision in which an opponent of a general plan sought its repeal by the legislative body, or a submission of the plan to referendum. The court described the plan as a "constitution for all future development within the city" and held that it was subject to the referendum process.⁵⁶

52. See § 23.15, *infra*.

53. Smith-Hurd Anno Stat (Ill) 24 § 11-12-5.

54. Smith-Hurd Anno Stat (Ill) 24 § 11-12-6.

55. See generally 55 Cal Jur 2d, Zoning § 13.

56. *O'Loane v O'Rourke*, 231 Cal App 2d 774, 42 Cal Rptr 283 (1965, 2d Dist).

The decision not only implied a permanency which no master plan should have, but made the process of adoption and change difficult by subjecting it to the referendum process.⁵⁷

§ 23.13. —Procedural requirements.

The procedure for adoption of a comprehensive plan normally includes public notice and hearing, whether the power to adopt is vested in the planning commission or in the legislative body. Thus, in New Jersey, a municipal planning board may adopt a master plan after a public hearing.⁵⁸ In Illinois, where the power to adopt a plan is delegated to the legislative body, the adoption process is described in great detail. The relevant statute reads, in part: "On and after the effective date of this amendatory act of 1961, an official comprehensive plan, or any amendment thereof, shall not be adopted by a municipality until notice and opportunity for public hearing have first been afforded in the manner herein provided. Upon submission of a comprehensive plan by the plan commission, or a proposed amendment to an existing comprehensive plan, the corporate authorities shall schedule a public hearing thereon, either before the plan commission or the corporate authorities. Not less than 15 days' notice of the proposed hearing, and the time and place thereof, shall be given by publication in a newspaper of general circulation in the county or counties in which the municipality and contiguous unincorporated territory are located. The hearing shall be informal, but all persons desiring to be heard in support or opposition to the comprehensive plan or amendment shall be afforded such opportunity, and may submit their statements, orally, in writing, or both. The hearing may be recessed to another date if not concluded, if notice of the time and place thereof is publicly announced at the hearing or is given by newspaper publication not less than 5 days prior to the recessed

The preparation of a comprehensive plan involves the exercise of legislative judgment and is subject to judicial control only if its conclusion is without a rational basis. *Higginbottom v Barrett*, 473 F2d 745 (1973, CA5 Ga).

57. The adoption of a comprehensive plan by the legislative authority is not "zoning action" within the meaning of § 408, Art. 66B, Anno-

tated Code of Maryland. Accordingly, no appeal from such conduct is authorized. The adoption of a zoning text is "zoning action" and an appeal from such action will lie. *Stephans v Board of County Comrs.*, 41 Md app 494, 397 A2d 289 (1979), affd in part and revd in part on other grounds 286 Md 384, 406 A2d 1017.

58. 6 NJ Sess Laws '75 Ch 291 § 6a, NJ Stat Anno Title 40:55D-1 et seq.

Exhibit No. 1

M E M O R A N D U M

24
12-11-93

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: PHILIP G. SUNDERLAND
CITY ATTORNEY

IGNACIO BRITTO PESSOA
ASSISTANT CITY ATTORNEY

DATE: DECEMBER 9, 1993

SUBJECT: 1994 SESSION CHARTER BILL

Attached is the proposed 1994 General Assembly session charter bill. This bill makes two changes to the city charter, each of which is discussed below.

First, the bill adds a new § 9.07 to the charter. This section provides that city council may initiate a master plan amendment by majority vote. The proposed amendment is referred to the planning commission for consideration. The commission must act on the proposed amendment within 60 days although council may extend this period for an additional 60 days. In the event the planning commission recommends against the proposed amendment, the amendment may be adopted by council only by a six vote majority. Of course, in the event the commission recommends in favor of the amendment, or in the event that the commission does not act within the period it is required to act, then council may adopt the amendment by simple majority vote.

The second change amends the zoning notice provisions of § 9.12 of the charter. The revision makes clear that the 10 days notice of public hearing provision of § 9.12, which currently applies only to rezonings and text amendments, applies to all land use and land development permit public hearings in the city. These include site plan, special use permit, subdivision, board of architectural review, and board of zoning appeal public hearings.

Two other changes to the charter discussed in the legislative package have been omitted. The first of these would have allowed the city to set land use and land development application fees by resolution, as opposed to by ordinance. This change has been deleted at the request of the General Assembly delegation. The second omitted change would have required the State Historic Preservation Officer (SHPO) to delegate to the city that officer's authority, under the Americans with Disabilities Act, to approve alternative requirements for accessibility for qualified historic buildings and facilities in Alexandria. The SHPO has indicated his willingness to delegate this authority to the city. Thus, this proposed amendment no longer appears necessary.

sad

Attachment

cc: Vola Lawson (w/attachment)
City Manager

Michele Evans (w/attachment)
Assistant City Manager

Sheldon Lynn (w/attachment)
Director of Planning and Community Development

1994 SESSION
VIRGINIA ACTS OF ASSEMBLY -- CHAPTER _____

An Act to adopt a new § 9.07, and to amend and reenact § 9.12, as amended, of Chapter 536 of the Acts of Assembly of 1950, which provided a Charter for the City of Alexandria, relating to master plan amendments and zoning procedures.

Be it enacted by the General Assembly of Virginia:

1. That Chapter 536 of the Acts of Assembly of 1950 is amended and reenacted by adding thereto a new § 9.07 as follows:

§ 9.07. Amendment of Master Plan Initiated by Council.

Amendment of the master plan may be initiated by a majority vote of the city council to submit a proposed amendment to the planning commission. Notwithstanding any provision in this charter or the general law to the contrary, if the planning commission disapproves the proposed amendment, the council shall have the power to overrule such action and adopt the amendment by an affirmative vote of not less than six members. The failure of the planning commission to act within sixty days from the date of the official submission to it shall be deemed approval; provided, that the council may extend such sixty day period for an additional period not to exceed sixty days upon a recorded vote of the majority of all the members of council that good cause exists for such extension. The authority of the council under this section shall be concurrent with the authority of the planning commission to initiate a master plan amendment on its own motion.

2. That § 9.12 of Chapter 536 of the Acts of Assembly of 1950 is amended and reenacted as follows:

§ 9.12. Adoption and amendment of regulations and restrictions and determination of zone boundaries; notice of public hearings.

A. Subject to the other provisions of this chapter, the council shall have power by ordinance to adopt the regulations and restrictions hereinbefore described and determine the boundaries of the zones in which they shall apply, provide for their enforcement, and from time to time amend, supplement or repeal the same. The council shall also have authority to provide for the collection of fees to cover costs involved in the consideration of any application for amendment of any such determination of boundaries, to be paid to the director of finance by the applicant upon filing such request. No ordinance to adopt the regulations and restrictions hereinbefore described or to determine the boundaries of zones or to provide for their enforcement, and no ordinance to amend, supplement or repeal the same shall be enacted until the application or motion for such change has been considered by the city planning commission and until after a public hearing in relation thereto has been held by the commission. ~~At least ten days' notice of the time and place of any such hearing shall be published in a newspaper of general circulation in the city.~~ The commission may recommend approval or disapproval of the matter by the city council, or the

commission may request that the council refer the matter back to the commission for further study. The commission shall vote on the application or motion at the public hearing; provided, that the commission may defer a vote for a period not to exceed ninety days upon a recorded vote of a majority of the members of the commission that good cause exists for such deferral.

B. A public hearing on the application or motion shall be held by the council, at which time the parties in interest shall have an opportunity to be heard. ~~At least ten day notice of the time and place of such hearings before the city council shall be published in a newspaper of general circulation in the city.~~ Council may, by ordinance, provide for the consideration of applications or motions or both by the commission or council only at specified intervals of time, not exceeding ninety days. The council may approve or disapprove recommendations of the planning commission on the matter, subject to the provisions of ~~§section~~ 9.06 of this charter. It may also refer back the matter to the commission for further study.

C. The commission shall act on any matter referred back from the council for further study within twenty-five calendar days of the date of the council referral and shall resubmit its reviewed recommendations to council. Such commission action shall follow a public hearing on the matter which shall be preceded by at least ten days' notice thereof published in a newspaper of general circulation in the city. If two-thirds of the entire membership of the commission votes to recommend disapproval of any matter referred back to the commission by the council for further study, such recommendation may be overruled only by a recorded affirmative vote of three-fourths of all the members of the council. If the commission fails to act on such a referral back within twenty-five days of the date of the council referral or fails to recommend disapproval of the matter referred back or by a two-thirds vote of its entire membership, the council may adopt said application or motion for change by a simple majority. an additional public hearing shall be held by the council, preceded by at least ten days' notice thereof published in a newspaper of general circulation in the city, on any matter referred by council to the planning commission for further study forty-five days from the date on which the matter was referred back to the planning commission by the council; provided, that the council may extend such forty-five-day period for an additional period not to exceed forty-five days upon a recorded vote of the majority of all members of council that good cause exists for such extension.

D. Should the council approve the application or motion, seventy-five days may be taken to follow the proper procedure for the passage of an ordinance implementing the approval.

E. The time constraints and limitations listed and described above in this section shall not apply to any motion, or to any ordinance, to adopt, amend, supplement or repeal the regulations and restrictions hereinbefore described, or to provide for their enforcement. In addition, notwithstanding any of the procedural requirements set forth in this chapter or by other law,

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ordinances adopting or amending zoning regulations and restrictions or determining zone boundaries may be enacted under the emergency ordinance provisions of this charter without compliance with such requirements.

F. The council, in determining the boundaries of zones, may approve an application or motion for, and may adopt an ordinance for, a zone change to a more restrictive zone than that originally applied for or moved; provided, in cases where the zone change procedure is initiated by other than the planning commission or the council on its own motion: (1) that the planning commission recommends in favor of such more restrictive zone change a public hearing held to consider the application for a zone change amendment; (2) that the applicant agrees to the more restrictive zone change at or before the said planning commission hearing; and (3) that at least ten days' notice of the more restrictive zone change and of the time and place of the public hearing before council required by this section shall be given by publication thereof in a newspaper of general circulation in the city. A protest under §section 9.13 of this charter against a less restrictive zone change shall not be effective against a more restrictive change. This shall not, however, preclude the filing of an effective new protest against a more restrictive zone change under §section 9.13, nor shall it preclude the effectiveness of a protest filed against both a less restrictive and a more restrictive zone change.

G. Whenever a public hearing is required or provided under the provisions of this chapter or any related provision of general law, or under any local ordinance adopted pursuant to this chapter or such general law, at least ten days' notice of the time and place of such hearing, together with a general description of the matter being heard, shall be published in a newspaper of general circulation in the city. The council may, by ordinance, prescribe additional notice requirements for particular hearings or classes of hearings. This subsection shall preempt all other notice requirements of general or special law.

3. That an emergency exists and this Act is enforced from its passage.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

EXHIBIT No. 2

24

12-11-93

Italo H. Ablondi
209 Prince Street
Alexandria, Va. 22314

December 6, 1993

Hon. Patsy Ticer
City Council
City Hall
Alexandria, VA 22314

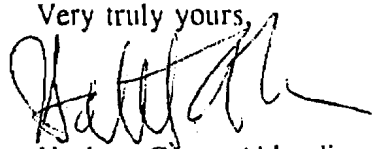
Re: Proposed Amendments to the Charter (Section 9.07 and Amendment to Sections 9.09, 9.12)

Dear Ms. Ticer:

We are writing to voice objection to changes that, in essence, deny us notice of changes in the Martin Plan.

Residents must receive actual notice of changes which affects their neighborhoods. The proposed amendments are another form of "Taxation without Representation." We urge that you vote against such Amendments that deny residents of actual notice of changes to their neighborhood.

Very truly yours,



Unalane Carter Ablondi
Italo A. Ablondi

CC:
Hon. Bill Cleveland
Hon. Lonnie Rich
Hon. Kerry Donley

Hon. David Speck
Hon. Redella Pepper
Hon. Michael Jackson

DF

24
12-11-93

Charles C. Bailey
Representative
Auburn Village Condominium
3307A Commonwealth Avenue
Alexandria, VA 22305

December 6, 1993

**The Honorable Mayor and
Members of Council**
300 King Street
Alexandria, VA 22314

Re: December 11th public hearing
Legislative Package

Dear Mayor Ticer and Members of Council,

I have recently been re-appointed by vote of the Board of Directors of Auburn Village Condominium to represent my association in matters related to the city and local affairs. I have been honored in the past to work with the Mayor, Council, and staff in this capacity and look forward to this continuing relationship.

In addition to reintroducing myself, I would also like to comment on your upcoming consideration of the legislative package. The one issue I would like to address is the provision to allow City Council to take up matters not acted upon by City Planning Commission. **We are very much in favor of this provision.** It is contrary to the principles of representative government to allow a non-elected body to make a **final** decision on matters affecting the citizens of Alexandria. City Council should and must have the right to review and make the **FINAL** decision on all matters concerning the City of Alexandria.

Thank you for your continuing efforts on behalf of Alexandria. If I can ever be of any assistance to you, please do not hesitate to contact me at my voice mail and FAX number, (703) 684-3504.

Sincerely yours,

Charles C. Bailey
Charles C. Bailey

xc: Jim McCarthy, President
Auburn Village Condominium

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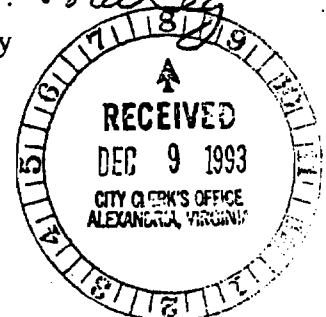


EXHIBIT No. 3

24

12-11-93

**LEAGUE OF WOMEN VOTERS
OF ALEXANDRIA, VIRGINIA**

Testimony before Alexandria City Council Public Hearing
December 11, 1993

The Alexandria League of Women Voters is pleased to have the opportunity to comment on two proposals in the City's legislative package.

Our views on the recommended amendment to the Freedom of Information Act have already been publicized in our letter to the Editor of the Alexandria Journal. Therefore, our comments on this issue will be somewhat brief.

To change the present law would require a vote of the General Assembly. If such a measure should come before the General Assembly, the State League and our local League will both lobby against it.

We feel this change is unnecessary and even dangerous. Alexandria voters are well-educated, sophisticated people. They live in the shadow of the Federal Government and understand that successful government is often a matter of give and take. They won't be shocked or dismayed if they see their Councilmembers engaging in some give and take or even arguing during a Council meeting or work session. What would offend Alexandria voters is changing their Council meetings into short, pre-planned, vacuous sessions designed to ratify decisions already made.

It is immaterial to us that other governing bodies, such as the Virginia General Assembly, conduct public business in private. We do not believe that that is how Thomas Jefferson wanted Virginia institutions to govern.

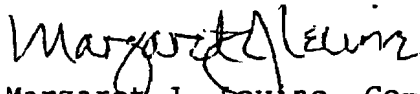
The other issue that concerns us is the Charter Amendment to allow Council to act upon proposed amendments to the Master Plan without having received a recommendation from the Planning Commission.

Recently, the Alexandria League of Women Voters conducted a thorough study of development issues as the City's new Master Plan was being written. Our members agreed that the League should support the Master Plan process. It is our belief that the proposed Charter Amendment compromises the safeguards of that process and undermines the important role of the Planning Commission.

As a strong advocate of citizen participation in government, the League prefers that Council continue to use to the fullest extent possible the expertise of the citizen members of the Planning Commission. We do not want to set a precedent for circumventing the recommendations of our City's Boards and Commissions.

We hope you will devote more thought to both of these matters.

Respectfully submitted,



Margaret J. Levine, Co-President
Alexandria League of Women Voters

H. STEWART DUNN, JR.
418 SOUTH LEE STREET
ALEXANDRIA, VIRGINIA 22314

24
12-11-93

December 8, 1993

The Honorable Patricia S. Ticer
Mayor, City of Alexandria
City Hall
301 King Street
Alexandria, VA 22314

Re: Proposed Legislative Agenda

Dear Mayor Ticer:

I am writing to urge you and the other members of the Council not to seek to add a new section 9.07 or to amend section 9.12 of the Alexandria City Charter.

With respect to the first proposal, the City Council should not seek to authorize master plan amendments that have not been approved by the Planning Commission. The present enabling legislation is working well and constitutes a good balance between the interest of residents and real estate interests. The proposed change would only bring controversy and disruption to the planning process.

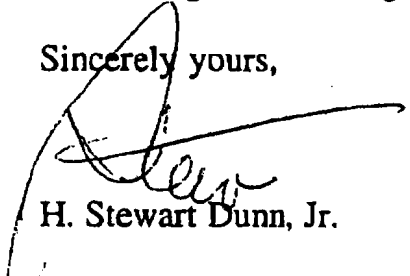
With respect to the second proposal, it is patently clear that a legal notice in a newspaper is a hopelessly inadequate notice to adjoining landowners and others regarding matters coming before City Council, the Planning Commission and the Board of Zoning Appeals. As the Vice Chairman of the latter body, I can tell you from considerable experience that the present posting requirements

The Honorable Patricia S. Ticer
December 8, 1993
Page 2

are the minimum notice that is fair and responsible to adjoining
landowners and other interested parties.

I urge you not to pursue either of these legislative changes.

Sincerely yours,



H. Stewart Dunn, Jr.

cc: Councilman William C. Cleveland
Councilman Kerry J. Donley
Councilman T. Michael Jackson
Councilwoman Redella S. Pepper
Council Member Lonnie C. Rich
Councilman David G. Speck

**ALEXANDRIA FEDERATION OF
CIVIC ASSOCIATIONS, INC.**

P. O. Box 3613
Alexandria, Virginia 22302

100-1
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12-11-93

December 11, 1993

Hand Delivered

Honorable Patricia S. Ticer
Mayor, City of Alexandria

Dear Madam Mayor:

On behalf of the Alexandria Federation of Civic Associations, I would like to convey our position on several items in the city's proposed legislative package.

At our Dec. 1 meeting, the Federation met with City Attorney Phil Sunderland and discussed three matters. They were 1) the proposal to allow the City Council to bypass the Planning Commission to make changes in the city's master plan; 2) the proposal to exempt from the Virginia Freedom of Information Act meetings of three members of City Council; and 3) allowing Alexandria citizens to propose and vote on advisory referenda.

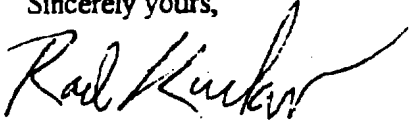
Briefly, we voted to urge you not to change the process by which amendments to the master plan are approved because of the danger that such a change could politicize major land use decision and undermine the very reason why the master plan exists. The current system has served Alexandria well. The Federation asks that City Council continue to place its trust in those experts whom you appoint to the Planning Commission. We regret that consultations by the City Council on this proposal with civic groups, as urged by the city staff, have never occurred.

Furthermore, we voted to oppose any change in the Freedom of Information Act. While we realize that this may place a burden at times on the City Council, it is more important that discussions of sensitive issues in particular occur fully within public view. In this matter, we are in agreement with the position adopted by the Alexandria League of Women Voters.

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Lastly, we voted in favor of asking City Council to seek the authority to allow advisory referenda in Alexandria. As you know, this was discussed at City Council's retreat but there was consensus not to pursue such authority. The Federation believes that decision was in error and ask that you reconsider it for inclusion in the city's package of proposed Charter amendments this year.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rod Kuckro". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Rod Kuckro
President

cc: Members of City Council
Honorable Marian Van Landingham
Honorable Bernard Cohen
Honorable Robert Calhoun

MEMORANDUM NO. 1

Attachment 2

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5-25-10

MEMORANDUM

TO: ALICIA R. HUGHES,
MEMBER OF COUNCIL

FROM: JAMES L. BANKS, JR.
CITY ATTORNEY

JOANNA C. FRIZZELL
ASSISTANT CITY ATTORNEY

DATE: APRIL 7, 2010

SUBJECT: PROCEDURES FOR PROCESSING MATTERS WITHIN THE
JURISDICTION OF THE PLANNING COMMISSION

You have requested that we draft a text amendment ordinance that would make the City Council the final arbitrator of planning decisions with appeal to the City Council as a matter of right rather than upon the motion of a member of City Council. Specifically, you requested that the text amendment amend the current procedure for processing Master Plan Amendments so that all Master Plan Amendments go through the City Council after a recommendation by the Planning Commission.

We have reviewed the relevant sections of the Zoning Ordinance and the City Charter and have determined that in order to make this change, the City Charter would need to be amended. We are providing this memo to explain the current procedure for Master Plan Amendments, as well as rezoning and text amendments because their processes are similar to the Master Plan Amendment. We would like to discuss this matter further with you to determine whether you would like to request a change to the Charter that would allow this text amendment. Please note, all code sections and Charter sections referred to below are attached for your information.

For your information and use, we have also included an outline of the City Council Land Use and Zoning procedures to help distinguish between the different types of cases and procedures.

Current Procedure -Master Plan Amendments

In Virginia, generally, it is the role of the Planning Commission to prepare and recommend a Master Plan to the local governing body and it is the role of the governing body to adopt such Master Plan. The Alexandria City Charter has been consistent with the Virginia State Code on this matter (See Virginia Code Section 15.2-2223 and Section 15.2-2225; See Charter Section 9.01 giving the City Council the power to adopt and Charter Section 9.04 giving the Planning Commission the duty to prepare the Master Plan and certify to City Council). Pursuant to both bodies of law, it is the Planning Commission's responsibility to prepare and periodically review and revise the Master Plan. If the Planning Commission

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recommends changes to the Master Plan, they must adopt the changes by resolution and forward the resolution to City Council for their consideration. The City Council then holds a public hearing on the resolution referred by the Planning Commission. If the City Council approves the resolution, then an ordinance implementing the change is considered by the City Council.

If a change is considered by the Planning Commission and it is determined not to be a change they would recommend, then the amendment is not referred to City Council. The Zoning Ordinance has been drafted consistently with this described procedure. (See Section 11-905 of the Zoning Ordinance).

In 1995, the Alexandria City Charter was amended to include a limited procedure that departs from this traditional role and from the Virginia State Code that gives the City Council additional powers in this regard. This procedure allows the City Council to overrule the Planning Commission's decision to disapprove a proposed amendment to the Master Plan under limited circumstances including 1) if the City Council had initiated the Master Plan amendment and 2) if the City Council approves the Master Plan Amendment by a Super Majority vote. (See Charter Section 9.07.1). Therefore, if the Planning Commission disapproves a Master Plan amendment that a council member believes should have been approved, the City Council has some power to reverse that decision.

Current Process - Rezoning or Text Amendments

Similarly, the Alexandria City Charter gives the City Council the authority to adopt regulations and restrictions pertaining to land use and to adopt zoning boundaries (See City Charter Section 9.09 and 9.12) and gives the Planning Commission the duty to prepare and submit the regulations and restrictions as well as the zoning boundaries to the City Council. (See City Charter Section 9.11). The Alexandria Zoning Ordinance accordingly contains provisions on processing zoning amendments (also known as "rezoning") (See Zoning Ordinance Section 11-807) and text amendments (See Zoning Ordinance Section 11-806). In both cases, if the Planning Commission disapproves a proposed amendment (either a rezoning or a text amendment), then the matter is still referred to City Council but they may only approve it by an affirmative vote of three-fourths of the members. The City Charter as well as the Zoning Ordinance contains a very specific procedure for when a rezoning or text amendment is referred back to the Planning Commission from the City Council. See City Charter Section 9.12 (C) and Zoning Ordinance 11-806(B)(2) and 11-807(B)(2).

Potential amendments to these procedures

You have indicated that you would like to revise these procedures to make these decisions by the Planning Commission strictly recommendations to the City Council and to allow the City Council to review all proposals, whether they are approved or disapproved by the Planning Commission. Because the City Charter includes specific provisions regarding the procedures currently included in the Alexandria Zoning Ordinance, then there would need to be an amendment to the City Charter in order to make any changes to this procedure. Specifically, in regard to Master Plans, Sections 9.04 would need to be amended to revise the duties of Planning Commission and Section 9.07.1 would need to be revised to expand the review

ability by City Council. In regard to the text amendments and zoning amendments, Sections 9.11 would need to be amended to change the duties of the Planning Commission.

As you are aware, changes to the City Charter need to be approved and adopted by the General Assembly. A request for these changes would need to be included in the next legislative package. If the General Assembly adopts the changes in their next session starting in January 2011, then the new charter would take effect in July 2011 and a text amendment to change the Zoning Ordinance accordingly could be approved by the City Council at that time.

Recommendations

As discussed, the procedures for preparing and amending Master Plans and considering Zoning Ordinance text amendments and rezonings is long standing in Alexandria and in Virginia in general. We would therefore advise that research be initiated including discussions with the Department of Planning and Zoning, discussions with other jurisdictions on their process and discussions with the community on these changes before a change of this nature is proposed. Please advise us if you are interested in pursuing this course of action.

Attachments

COUNCIL LAND USE AND ZONING PROCEDURES

I. MASTER PLAN AMENDMENTS (LEGISLATIVE ACTION)

- A. Initiated by planning commission or city council on own motion, or by property owner application.
- B. Requires public hearing and approval by planning commission.
- C. If approved by planning commission, requires public hearing and action by city council.
- D. Special procedure - where council initiates the amendment, and the planning commission disapproves the amendment, council can adopt by six-vote super majority.
- E. Final adoption requires the additional public hearing on, and adoption of, an ordinance by council.

II. ZONING MAP AMENDMENTS (REZONINGS) (LEGISLATIVE ACTION)

- A. Initiated by planning commission or city council on own motion, or by property owner application.
- B. Requires public hearing and recommendation by planning commission.
- C. Requires public hearing and action by city council (See Section IV).
- D. Consistency with Master Plan.

III. ZONING TEXT AMENDMENTS (LEGISLATIVE ACTION)

- A. Initiated by planning commission or city council on own motion.
- B. Requires public hearing and recommendation by planning commission.
- C. Requires public hearing and action by city council (See Section IV).
- D. Requires a final adoption of ordinance.

**IV. COUNCIL ACTION ON ZONING MAP AND TEXT AMENDMENTS
(LEGISLATIVE ACTION)**

- A. If the planning commission recommends approval of the item, council can adopt the item by simple majority vote.
- B. If the planning commission recommends denial of the item, council can adopt the item only by six-vote super majority, or can refer the item back to the commission by simple majority vote.
- C. If on referral back, the commission does not reaffirm its recommendation for denial by a five-vote majority within 25 days of the referral back, then council, following another public hearing, can adopt the item by simple majority vote; otherwise council must muster a six-vote super majority to adopt the item.
- D. As noted, in all cases, final adoption of a zoning map or text amendment requires the additional public hearing on, and adoption of, an ordinance by council:

**V. SPECIAL USE PERMITS (WITH OR WITHOUT SITE PLAN)
(QUASI LEGISLATIVE ACTION)**

- A. Requires an application by property owner.
- B. Requires public hearing and recommendation by planning commission.
- C. Requires public hearing and action by city council (motion to approve or deny, by simple majority).

VI. APPEALS TO COUNCIL (ADMINISTRATIVE ACTION)

- A. From planning commission decision on a subdivision application or on a stand-alone site plan.
- B. From board of architectural review decision on a certificate of appropriateness or permit to demolish.
- C. Requires public hearing and action by council (motion to affirm or reverse, or to vacate and remand, by simple majority).

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§ 15.2-2225. Notice and hearing on plan; recommendation by local planning commission to governing body; posting of plan on website.

Prior to the recommendation of a comprehensive plan or any part thereof, the local planning commission shall (i) post the comprehensive plan or part thereof that is to be considered for recommendation on a website that is maintained by the commission or on any other website on which the commission generally posts information, and that is available to the public or that clearly describes how the public may access information regarding the plan or part thereof being considered for recommendation, (ii) give notice in accordance with § 15.2-2204, and (iii) hold a public hearing on the plan. After the public hearing, the commission may approve, amend and approve, or disapprove the plan. Upon approval, the commission shall by resolution recommend the plan, or part thereof, to the governing body and a copy shall be certified to the governing body. Any comprehensive plan or part thereof approved by the commission pursuant to this section shall be posted on a website that is maintained by the commission or on any other website on which the commission generally posts information, and that is available to the public or that clearly describes how the public may access information regarding the plan or part thereof approved by the commission and certified to the governing body. Inadvertent failure to post information on a website in accordance with this section shall not invalidate action taken by the local planning commission following notice and public hearing as required herein.

(Code 1950, §§ 15-908, 15-921, 15-922, 15-964.2, 15-964.3; 1958, c. 389; 1962, c. 407, § 15.1-448, 15.1-449; 1968, c. 735; 1975, c. 641; 1976, c. 642; 1997, c. 587; 2009, c. 605.)

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§ 15.2-2223. Comprehensive plan to be prepared and adopted; scope and purpose.

The local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction.

In the preparation of a comprehensive plan, the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.

The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature, including any road improvement and any transportation improvement, shown on the plan and shall indicate where existing lands or facilities are proposed to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.

As part of the comprehensive plan, each locality shall develop a transportation plan that designates a system of transportation infrastructure needs and recommendations that may include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan and shall include, as appropriate, but not be limited to, roadways, bicycle accommodations, pedestrian accommodations, railways, bridges, waterways, airports, ports, and public transportation facilities. The plan should recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors. The Virginia Department of Transportation shall, upon request, provide localities with technical assistance in preparing such transportation plan.

The plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the locality's long-range recommendations for the general development of the territory covered by the plan. It may include, but need not be limited to:

1. The designation of areas for various types of public and private development and use, such as different kinds of residential, including age-restricted, housing; business; industrial; agricultural; mineral resources; conservation; active and passive recreation; public service; flood plain and drainage; and other areas;
2. The designation of a system of community service facilities such as parks, sports playing fields, forests, schools, playgrounds, public buildings and institutions, hospitals, nursing homes, assisted living facilities, community centers, waterworks, sewage disposal or waste disposal areas, and the like;
3. The designation of historical areas and areas for urban renewal or other treatment;
4. The designation of areas for the implementation of reasonable ground water protection measures;
5. A capital improvements program, a subdivision ordinance, a zoning ordinance and zoning district maps, mineral resource district maps and agricultural and forestal district maps, where applicable;
6. The location of existing or proposed recycling centers;
7. The location of military bases, military installations, and military airports and their adjacent safety areas; and
8. The designation of corridors or routes for electric transmission lines of 150 kilovolts or more.

The plan shall include: the designation of areas and implementation of measures for the construction, rehabilitation and maintenance of affordable housing, which is sufficient to meet the current and future needs of residents of all levels of income in the locality while considering the current and future needs of the planning district within which the locality is situated.

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The plan shall include: a map that shall show road improvements and transportation improvements, including the cost estimates of such road and transportation improvements as available from the Virginia Department of Transportation, taking into account the current and future needs of residents in the locality while considering the current and future needs of the planning district within which the locality is situated.

(1975, c. 641, § 15.1-446.1; 1976, c. 650; 1977, c. 228; 1988, c. 268; 1989, c. 532; 1990, c. 19; 1993, cc. 116, 758; 1996, cc. 585, 600; 1997, c. 587; 2003, c. 811; 2004, cc. 691, 799; 2005, cc. 466, 699; 2006, cc. 527, 563, 564; 2007, c.761.)

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§ 31

Sec. 9.01 Power to adopt master plan.

In addition to the powers granted elsewhere in this charter, the council shall have the power to adopt by ordinance a master plan for the physical development of the city to promote health, safety, morals, comfort, prosperity and general welfare. The master plan may include but shall not be limited to the following:

- (a) the general location, character and extent of all streets, highways, super-highways, freeways, avenues, boulevards, roads, lanes, alleys, walks, walkways, parks, parkways, squares, playfields, playgrounds, recreational facilities, stadia, arenas, swimming pools, waterways, harbors, waterfronts, landings, wharves, docks terminals, canals, airports and other public places or ways and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension thereof
- (b) the general location, character and extent of all public buildings, schools and other public property and of utilities whether publicly or privately owned, off-street parking facilities, and the removal, relocation, vacating, abandonment, change of use, alteration or extension thereof.
- (c) the general location, character and extent of slum clearance housing and neighborhood rehabilitation projects, including the demolition, repair or vacation of substandard, unsafe or unsanitary buildings.
- (d) a general plan for the control and routing of railways, streetcar lines, bus lines and all other vehicular traffic.
- (e) the general character, location and extent of all roads, streets, highways, super-highways, freeways, boulevards, parks, parkways and public buildings and public facilities and of such other general features as may affect the health, welfare, safety and prosperity of the city.

Before the council considers an ordinance proposing the adoption of a new master plan or an amendment of an existing master plan, it shall first conduct a public hearing proceeded by notice as provided in subsection G of Section 9.12. (Acts 1968, ch. 510, § 1; Acts 1970, ch. 492; Acts 1971, Ex. Sess., ch. 166, § 1; Acts 1982, ch. 480, § 1; Acts 1988, ch. 157; Acts 1995, ch. 782, § 1)

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Sec. 9.04 Duty to adopt master plan.

It shall be the duty of the commission to make and adopt a master plan which with accompanying maps, plats, charts, and descriptive matter shall show the commission's recommendations for the development of the territory covered by the plan.

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Sec. 9.07.1 Amendment of master plan initiated by council.

Amendment of the master plan may be initiated by a majority vote of the city council to submit a proposed amendment to the planning commission. Notwithstanding any provision in this charter or the general law to the contrary, if the planning commission disapproves the proposed amendment, the council shall have the power to overrule such action and adopt the amendment by an affirmative vote of not less than six members. The failure of the planning commission to act within sixty days from the date of the official submission to it shall be deemed approval; however, the council may extend such sixtyday period for an additional period not to exceed sixty days upon a recorded vote of the majority of all the members of council that good cause exists for such extension. The authority of the council under this section shall be concurrent with the authority of the planning commission to initiate a master plan amendment on its own motion. (Acts 1994, bill no. 22, § 1)

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Sec. 9.09 Zoning powers.

In addition to the powers granted elsewhere in this charter, the council shall have the power to adopt by ordinance a comprehensive zoning plan designed to lessen congestion in streets, secure safety from fire, panic and other danger, promote health, sanitation and general welfare, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, facilitate public and private transportation and the supplying of public utility services and sewage disposal, preserve existing and facilitate the provision of new housing that is affordable to all segments of the community, and facilitate provision for schools, parks, playgrounds and other public improvements and requirements. The comprehensive zoning plan shall include the division of the city into zones with such boundaries as the council deems necessary to carry out the purposes of this charter and shall provide for the regulation and restriction of the use of land, buildings and structures in the respective zones and may include but shall not be limited to the following:

- (a) It may permit specified uses of land, buildings and structures in the zones and prohibit all other uses.
- (b) It may restrict the height, area and bulk of buildings and structures in the zones.
- (c) It may establish setback building lines and prescribe the area of land that may be used as front, rear and side yards and courts and open spaces.
- (d) It may restrict the portion of the area of lots that may be occupied by buildings and structures.
- (e) It may prescribe the area of lots and the space in buildings that may be occupied by families.
- (f) It may require that spaces and facilities deemed adequate by the council shall be provided on lots for parking vehicles in conjunction with permitted uses of land and that spaces and facilities deemed adequate by the council shall be provided on lots for off-street loading or unloading of vehicles.
- (g) It may provide that land, buildings and structures and the uses thereof which do not conform to the regulations and restrictions prescribed for the zone in which they are situated may be continued so long as the then existing or more restricted use continues and so long as the buildings or structures are maintained in their structural condition; and may require that such buildings or structures and the use thereof shall conform to the regulations and restrictions prescribed for the zone or zones in which they are situated whenever they are enlarged, extended, reconstructed or structurally altered; and may require that such buildings or structures and the use thereof shall conform to the regulations and restrictions prescribed for the zone or zones in which they are situated, in any event within a reasonable period of time to be specified in the ordinance.
- (h) It may require that permits be granted for special uses of property within a zone.
- (i) It may, in order to promote the general welfare through the preservation and protection of historic places and any other buildings or structures within the city having an important historic, architectural or cultural interest and other areas of historic interest in the city and through the preservation of the memorial character of the George Washington Memorial Highway, provide for old and historic districts or designated preservation districts in which no building or structure shall be erected, reconstructed, altered, restored, moved, removed, capsulated or razed until approved by a board of architectural review and in which, notwithstanding any contrary provision of general law, no building or structure shall be allowed to deteriorate so that the building or structure or any exterior architectural feature thereof shall be lost or threatened with loss.
- (j) It may create boards of architectural review which shall have the power to pass upon the appropriateness of exterior architectural features, including signs, of buildings and structures to

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be erected, reconstructed, altered or restored in any old and historic districts or in designated preservation districts established in the city and prohibit the moving, removing, capsulation, demolition or razing of any building in such a district without a permit if any such building is of such historic, architectural or cultural interest that its removal would be to the detriment of the public interest.

In addition to the provisions of section 2.06 of this charter, the council may adopt an ordinance which establishes a civil penalty for the moving, removing, capsulation, demolition or razing of a building or structure which is located in an old and historic or a designated preservation district without the prior approval from either the board of architectural review or the council. The civil penalty established for a violation of any such ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the violation, and that market value shall include the value of any improvements together with the value of the land upon which any such improvements are located. Such ordinances may be enforced by the city attorney by bringing an action in the name of the city in the circuit court. Such actions shall be brought against the party or parties deemed responsible for the violation. It shall be the burden of the city in any such action to show the liability of the violator by a preponderance of the evidence.

The council shall establish standards, rules, regulations and procedures for the operation of any such boards of architectural review, and, to carry out the purposes and provisions of subsection (i) above and of this subsection (j), it shall provide for appeals to the city council from any final decision of a board, which appeal shall stay a board's decision pending the outcome of the appeal before the council. The council, on appeal, shall apply the same standards as those established for such boards and may affirm, reverse or modify the decision of such boards, in whole or in part. The city council shall determine, by ordinance, the parties entitled to appeal decisions of the city council; such parties shall have the right to appeal to the circuit court of the city for review by filing a petition, at law, setting the alleged illegality of the city council's action, provided such petition is filed within thirty days after the final decision is rendered by the city council. The filing of the said petition shall stay the council's decision pending the outcome of the appeal to the court. Findings of fact by the council shall be conclusive on the court in any such appeal. The court may reverse or modify the decision of the council, in whole or in part, if it finds upon review that the decision of the council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of council.

In addition to the right of appeal hereinabove set forth, the owner of a building or structure, the moving, removal, capsulation, the razing or demolition of which is subject to the provisions of subsection (i) above and of this subsection (j), shall, as a matter of right, be entitled to move, remove, capsulate, raze or demolish such building or structure provided that: (1)-he has applied to the board for such right and has also been a party to an appeal from the board's decision to the council, (2) that the owner has for the period of time set forth in the time schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell such building or structure, and the land pertaining thereto, to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto, and (3) that no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to in this paragraph. No offer to sell shall begin more than one year after a final decision by the city council. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

(j-⁰¹) It may, in order to promote the general welfare through the preservation. and protection of

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properties in the city which are located outside of any old and historic or designated preservation district but which are over 100 years old and are of historic, architectural or cultural interest, provide by ordinance for the listing of such buildings and structures for preservation which shall not be moved, removed, demolished, razed, capsulated, reconstructed, altered or restored until approved by the board of architectural review except as hereinafter indicated and which, notwithstanding any contrary provision of general law, shall not be allowed to deteriorate so that the building or structure or any exterior architectural feature thereof shall be lost or threatened with loss.

Boards of architectural review shall have the power to prohibit moving, removal, capsulation, razing, reconstruction, alteration or restoration of any building or structure so listed that is over 100 years old and is of such historical, architectural or cultural interest that its removal would be to the detriment of the public interest.

In addition to the provisions of section 2.06 of this charter, the council may adopt an ordinance which establishes a civil penalty for the moving, removing, capsulation, demolition or razing of a building or structure which has been designated by the council as an historic building, or structure or landmark without the prior approval from either the board of architectural review or the council. The civil penalty imposed for a violation of any such ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the violation, and that market value shall include the value of any improvements together with the value of the land upon which any such improvements are located. Such ordinances may be enforced by the city attorney by bringing an action in the name of the city in the circuit court. Such actions shall be brought against the party or parties deemed responsible for the violation. It shall be the burden of the city in any such action to show the liability of the violator by a preponderance of the evidence.

The council shall establish standards, rules, regulations and procedures for the operation of such board to carry out the purposes and provisions of this subsection (j-01); it shall provide for appeals to the city council from any final decision of any board, which appeal shall stay the board's decision pending the outcome of the appeal before the council. The council, on appeal, shall apply the same standards as those established for the board and may affirm, reverse or modify the decision of a board, in whole or in part. The city council shall determine, by ordinance, the parties entitled to appeal decisions of the city council; such parties shall have the right to appeal to the circuit court of the city for review by filing a petition, at law, setting forth the alleged illegality of the city council's action, provided such petition is filed within thirty days after the final decision is rendered by the city council. The filing of the said petition shall stay the council's decision pending the outcome of the appeal to the court. Findings of fact by the council shall be conclusive on the court in any such appeal. The court may reverse or modify the decision of the council, in whole or in part, if it finds upon review that the decision of the council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of council. In addition to the right of appeal hereinabove set forth, the owner of a building or structure, the moving, removal, capsulation, razing or demolition of which is subject to the provisions of this subsection (j-01), shall, as a matter of right, be entitled to move, remove, capsulate, raze or demolish such building or structure provided that: (1) he has applied to a board for such right and has also been a party to an appeal from a board's decision to the council, (2) that the owner has for the period of time set forth, in the time schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell such building or structure, and the land pertaining thereto, to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to in this paragraph. No offer to sell shall begin more than one year after a final decision by the city council. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less

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than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

(j-l) To acquire, in the manner provided in Chapter 13 of this charter, areas, properties, lands or any estate or interest therein, of old and historic interest which, in the opinion of the council, should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people, provide for their renovation, preservation, maintenance, management and control as places of old- and historic interest by a department of the city government or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the old and historic character of the area, property or lands shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, property, lands or estate or interest therein so acquired as a place of old and historic interest, provided, the city shall not use the right of condemnation under this paragraph unless the historic value of such area, property, lands or estate or interest therein is about to be destroyed.

(k) To restrict, and regulate the erection of buildings and structures in areas subject to floods. (Acts 1956, ch. 262, § 1; Acts 1964, ch. 288; Acts 1966, ch. 12, § 1; Acts 1966, ch. 83, § 1; Acts 1975, ch. 5-11, § 1; Acts 1976, ch. 669; Acts 1982, ch. 480, § 1; Acts 1983, ch. 314, § 1; Acts 1986, ch. 459, § 1; Acts 1989, ch. 536, § 1; Acts 1992, ch. 512, § 1)

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Sec. 9.11 Duties of the city planning commission with relation to zoning.

It shall be the duty of the city planning commission to prepare and submit to the council a comprehensive zoning plan as referred to in section 9.09 of this chapter and from time to time, at intervals not exceeding two years, prepare and submit such changes in or revisions of the said plan as changing conditions may make necessary. The provisions of sections 9.06 and 9.13 shall apply to zone boundary changes adopted under section 9.10; provided, however, that said sections 9.06 and 9.13 shall not apply to city-owned property. (Acts 1960, ch. 8, § 1; Acts 1962, ch. 61, § 1; Acts 1964, ch. 288; Acts 1982, ch. 480, § 1)

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Sec. 9.12 Adoption and amendment of regulations and restrictions and determination of zone boundaries.

A. Subject to the other provisions of this chapter, the council shall have power by ordinance to adopt the regulations and restrictions herein before described and determine the boundaries of the zones in which they shall apply, provide for their enforcement, and from time to time amend, supplement or repeal the same. The council shall also have authority to provide for the collection of fees to cover costs involved in the consideration of any application for amendment of any such determination of boundaries, to be paid to the Director of Finance by the applicant upon filing such request. No ordinance to adopt the regulations and restrictions herein before described or to determine the boundaries of zones or to provide for their enforcement, and no ordinance to amend, supplement or repeal the same shall be enacted until the application or motion for such change has been considered by the city planning commission and until after a public hearing in relation thereto has been held by the commission. The commission may recommend approval or disapproval of the matter by the city council, or the commission may request that the council refer the matter back to the commission for further study. The commission shall vote on the application or motion at the public hearing; provided, that the commission may defer a vote for a period not to exceed 90 days upon a recorded vote of a majority of the members of the commission that good cause exists for such deferral.

B. A public hearing on the application or motion shall be held by the council, at which time the parties in interest shall have an opportunity to be heard. Council may, by ordinance, provide for the consideration of applications or motions or both by the commission or council only at specified intervals of time, not exceeding ninety 90 days. The council may approve or disapprove recommendations of the planning commission on the matter, subject to the provisions of § 9.06 of this charter. It may also refer back the matter to the commission for further study.

C. The commission shall act on any matter referred back from the council for further study within 25 calendar days of the date of the council referral and shall resubmit its reviewed recommendations to council. Such commission action shall follow a public hearing on the matter which shall be preceded by at least 10 days' notice thereof published in a newspaper of general circulation in the city. If two-thirds of the entire membership of the commission votes to recommend disapproval of any matter referred back to the commission by the council for further study, such recommendation may be overruled only by a recorded affirmative vote of threefourths of all the members of the council. If the commission fails to act on such a referral back within 25 days of the date of the council referral or fails to recommend disapproval of the matter referred back or by a two-thirds vote of its entire membership, the council may adopt said application or motion for change by a simple majority. An additional public hearing shall be held by the council, preceded by at least 10 days' notice thereof published in a newspaper of general circulation in the city, on any matter referred by council to the planning commission for further study 45 days from the date on which the matter was referred back to the planning commission by the council; provided, that the council may extend such 45-day period for an additional period not to exceed 45 days upon a recorded vote of the majority of all the members of council that good cause exists for such extension.

D. Should the council approve the application or motion, 75 days may be taken to follow the proper procedure for the passage of an ordinance implementing the approval.

E. The time constraints and limitations listed and described above in this section shall not apply to any motion, or to any ordinance, to adopt, amend, supplement or repeal the regulations and restrictions herein before described, or to provide for their enforcement. In addition, notwithstanding any of the procedural requirements set forth in this chapter or by other law, ordinances adopting or amending zoning regulations and restrictions or determining zone boundaries may be enacted under the emergency ordinance provisions of this charter without compliance with such requirements.

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F. The council, in determining the boundaries of zones, may approve an application or motion for, and may adopt an ordinance for, a zone change to a more restrictive zone than that originally applied for or moved; provided, in cases where the zone change procedure is initiated by other than the planning commission or the council on its own motion: (1) that the planning commission recommends in favor of such more restrictive zone change at a public hearing held to consider the application for a zone change amendment; (2) that the applicant agrees to the more restrictive zone change at or before the said planning commission hearing; and (3) that at least 10 days' notice of the more restrictive zone change and of the time and place of the public hearing before council required by this section shall be given by publication thereof in a newspaper of general circulation in the city. A protest under § 9.13 of this charter against a less restrictive zone change shall not be effective against a more restrictive change. This shall not, however, preclude the filing of an effective new protest against a more restrictive zone change under § 9.13, nor shall it preclude the effectiveness of a protest filed against both a less restrictive and a more restrictive zone change.

G. Whenever a public hearing is required or provided under the provisions of this chapter or any related provision of general law, or under any local ordinance adopted pursuant to this chapter or such general law, at least 10 days' notice of the time and place of such hearing, together with a general description of the matter being heard, shall be published in a newspaper of general circulation in the city. The council may, by ordinance, prescribe additional newspaper notice requirements for particular hearings or classes of hearings. This subsection shall preempt all other newspaper notice requirements of general or special law.

H. Any ordinance adopted, or other action taken, under the authority of this chapter or any related provision of general law prior to April 1, 2004, shall not be declared to be invalid by reason of a failure to advertise or give notice as required by general law, so long as advertisement and notice of such adoption or action was given in compliance with the then applicable local law; however, this subsection shall not affect any litigation concluded before, or pending on, April 1, 2004.

I. Whenever written notice of a public hearing is required to be given to an owner of property affected by the adoption or amendment of regulations or restrictions or zone boundaries under the provisions of this chapter or any related provision of general law, such notice shall be given for the public hearing on the application or motion for such adoption or amendment, as provided in subsection A or subsection B of this section, and not for the public hearing on the ordinance implementing the approval, as provided in subsection D of this section. (Acts 1956, ch. 262, § 1; Acts 1964, ch. 288; Acts 1968, ch. 510, § 1; Acts 1971, Ex. Sess., ch. 166, § 1; Acts 1973, ch. 258, § 1; Acts 1974, ch. 595, § 1; Acts 1982, ch. 480, § 1; Acts 1988, ch. 157; Acts 1989, ch. 536, § 1; Acts 1990, ch. 652, § 1; Acts 1994, bill no. 22, § 1; Acts 1995, ch. 6782, § 1; Acts 2004, Ch. 511, § 1)

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11-806 Action on motion for text amendment.

(A) Action by planning commission.

(1) *Recommendation on proposed amendment.* The planning commission shall hold a public hearing on the proposed text amendment at which time it shall vote on the matter and recommend that the city council approve the matter, disapprove the matter, or refer the matter back to the planning commission for further study. The planning commission may defer its decision upon a recorded vote of a majority of the members of the commission that good cause exists for such deferral. Such vote and the reasons therefor shall be sent to city council prior to city council's public hearing on the matter.

(2) *Reasons for recommendation.* In recommending the approval or disapproval of a proposed amendment, the planning commission shall state its reasons for such recommendation.

(3) *Action on referred back item.* If the city council refers a proposed text amendment back to the planning commission for further study, the planning commission shall hold a duly noticed public hearing on the matter, shall act on the matter by approving or disapproving the motion or by requesting that the council refer it back for further study, and shall submit its reviewed recommendation to city council.

(B) Action by city council.

(1) *Action on proposed text amendment.* The city council shall hold a public hearing on the proposed text amendment and shall act on the matter by approving or disapproving the recommendation of the planning commission or by referring the matter back to the planning commission for further study. If the planning commission recommends disapproval of a text amendment, city council may not approve it except by an affirmative vote of three-fourths of the members of the city council.

(2) *Action on referred back matter.* After a text amendment has been referred back to the planning commission for further study, the city council shall hold a duly noticed public hearing, consider the application along with the planning commission's reviewed recommendation and act on the matter by either approving it, disapproving it or referring the matter back to the commission for further study again. If the planning commission votes to disapprove the proposed amendment by a two-thirds vote of its members, the city council may not approve it except by an affirmative vote of three-fourths of its members.

(3) *Implementing ordinance.* If a text amendment is approved by city council, an ordinance implementing council's approval will be prepared and submitted to city council for its consideration.

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11-807 Action on map amendment.

(A) Action by planning commission.

(1) *Recommendation on proposed map amendment.* The planning commission shall hold a public hearing on the proposed map amendment at which time it shall vote on the matter and recommend that the city council approve the matter, disapprove the matter, or refer the matter back to the planning commission for further study. The planning commission may defer its vote for a period not to exceed 90 days upon a recorded vote of a majority of the members of the commission that good cause exists for such deferral. Such vote and the reasons therefor shall be sent to city council prior to city council's public hearing on the matter.

(2) *Reasons for recommendation.* In recommending the approval or rejection of a proposed map amendment, the planning commission shall state its reasons for such recommendation.

(3) *Action on referred back item.* If the city council refers a proposed map amendment back to the planning commission for further study, the planning commission shall hold a public hearing on the matter, shall act on the matter within 25 days of the date it was referred by either approving or disapproving the matter and shall submit its reviewed recommendation to city council.

(B) Action by city council.

(1) *Action on map amendment.* The city council shall hold a public hearing on a proposed map amendment and shall act on the matter by approving or disapproving the recommendation of the planning commission or by referring the matter back to the planning commission for further study. Except as provided in section 11-807(B)(2) below, if the planning commission recommends disapproval of a map amendment, city council may not approve it except by an affirmative vote of three-fourths of the members of the city council.

(2) *Action on referred back matter.* After a proposed map amendment has been referred back to the planning commission for further study, the city council shall hold a duly noticed public hearing, shall consider the proposed map amendment along with the planning commission's reviewed recommendation and shall act on the matter within 45 days of the date it was referred to the planning commission by either approving or disapproving it. If good cause exists for an extension, city council may extend the 45 day time limit for an additional 45 days. If the planning commission votes to disapprove the referred back map amendment by a two-thirds vote of its members, city council may not approve it except by an affirmative vote of three-fourths of its members. If the planning commission fails to act within 25 days of the referral or to recommend denial by a two-thirds vote, the city council may approve the proposed amendment by a simple majority.

(3) *Implementing ordinance.* If a map amendment is approved by city council, an ordinance implementing council's approval will be prepared and submitted to city council for its consideration within 75 days of the approval.

(C) Revision of proposed map amendment.

(1) The city council may adopt a map amendment which revises the boundaries of the land proposed for amendment or which changes the existing zone classification to a more or less restrictive one than the one originally proposed. If the map amendment to be adopted involves any land area not shown in the

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original proposal or imposes a less restrictive zone for the property than that originally proposed, public hearings on the revised proposal shall be held before the planning commission and city council and notice of such hearings shall be given by the city as though it were a new item.

(2) If the original proposal was brought by application, then city council may only approve the adoption of a more restrictive zone change if the following conditions have been met:

- (a) The planning commission has recommended in favor of the more restrictive zone change at a public hearing;
- (b) The applicant who proposed the original map amendment has agreed to the change at or before the planning commission public hearing on the revised zone amendment proposal; and
- (c) Notice pursuant to section 11-300 is given prior to the city council's public hearing on the more restrictive zone change.

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11-905 Action on master plan amendment.

(A) *Planning commission.* The *planning commission* shall hold a public hearing on the proposed amendment after which it may by resolution adopt the amendment by a vote of not less than a majority of its entire membership. The resolution and amendment shall then be forwarded to city council for its consideration.

(B) *City council action.* The *city council* shall hold a public hearing on a proposed amendment and shall act on the matter by approving, disapproving, or approving it with modifications. In the case of disapproval, the council shall return the proposal to the planning commission for its reconsideration.

(C) *Implementing ordinance.* If a *master plan amendment* is approved by *city council*, an ordinance implementing council's approval will be prepared and submitted to city council for its consideration.

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Attachment 3

EXHIBIT NO. 1

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5-25-10

TO: Mayor Bill Euille and the Honorable Members of Council

FROM: Councilwoman Alicia Hughes

CC: City Manager Jim Hartmann
Deputy City Manager Michelle Evans
City Attorney James Banks
Assistant City Attorney Joanna Frizell
Council Docket

RE: Docket Item 22
Consideration of a Request to Amend the City Code to Change the Procedures for Processing Master Plan Amendments by City Council

DATE: 19 May 2010

MEMORANDUM

On 27 April 2010, I sent a communication to the City Attorney requesting a draft ordinance that would have the effect of "mak[ing] the City Council the final arbitrator of planning decisions with appeal to the City Council as a matter of right rather than upon the motion of a member of City Council," with the intent of it being a discussion point for contemplating an amendment to the City Code. In response to that request, the City Attorney's Office instead produced a memo entitled "Re: Procedures for Processing Matters Within the Jurisdiction of the Planning Commission" which you received, too.

The intent behind my request for this ordinance is the belief that any applicant seeking an amendment to the master plan, who so desires, should have City Council, an elected body, rather than the Planning Commission, an appointed body, be the final arbiter on their applications for amendments to the master plan, if he or she so chooses. As a matter of background, the genesis of the request is not a desire to change the supermajority vote requirement needed by Council to overturn a Planning Commission decision on an application to amend the comprehensive master plan. Rather, the genesis of the request is to replace the process by which denials of applications to amend the master plan may come before Council, as a matter of fundamental fairness to those who may be aggrieved by an adverse Planning Commission decision, which is rare.

Under the current state of the law/our City Code, when an Applicant files an application for an amendment to the master plan, it is heard by the Planning Commission and either approved or denied by the same. If approved, the application is forwarded to the City Council for consideration. If denied, the application dies in Planning Commission *unless* it is brought before City Council on motion of a sitting member and at that time, *must receive the vote of a supermajority of Council members to even be heard*. Then, if the matter is heard, the application must be approved by a supermajority of the members of City Council to overturn the Planning Commission denial. Hence, two supermajority votes are required currently, one procedural and one substantive. I seek to amend a process related to the procedural one. **Importantly, I**

reiterate that I do not seek to remove the supermajority required to reverse the Planning Commission decision as relate to applications to amend the master plan but rather to ensure that every Applicant has the opportunity to be heard by Council on this particular matter through the right of direct appeal to the City Council, if desired and in a manner unlike our current process.

From what I understand from researching decisions in previous years, it is quite rare that applications to amend the master plan are denied and thus, the approval of the requested change to the city code is not likely to present an undue burden on Council. Further, the benefit to citizens would by far outweigh the burden. My requested change would make more fair, more open a part of our planning process while simultaneously giving property owners a right to be heard by us rather than grant of the same as a privilege, as implied by the required step of lobbying members of Council to take on their cause. The latter is what the Code as written reflects to me in current form.

I thank you for your consideration. Should you have questions or require additional information, you are welcome to be in touch. I look forward to a great discussion on this matter.