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# **MEMORANDUM**

**To: City of Dunwoody Mayor & City Council**  
**From: Community Development Staff**  
**Date: October 26, 2009**  
**Subject: Text Amendment for Public Noticing Requirements for Zoning Actions**

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Based upon continuing discussions begun in June among the City Council membership and the community development staff, it is agreed that at this time it would be prudent for the City of Dunwoody to examine and potentially amend its previously approved procedure for noticing requirements regarding zoning actions for both the Mayor & City Council meetings and for Zoning Board of Appeals meetings.

Staff has examined current policy for public notice and its relationship to both the Zoning Ordinance and the State of Georgia Zoning Procedures Act.

Zoning Procedures Law, O.C.G.A. §36-66-4, which reads in part: “A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.”

This state statute is the source of City of Dunwoody’s Ch. 27, §5A-18(a) and §5D-16(c), which are portions of the binding codes related to the public hearing notification process for Zoning Map amendments (commonly referred to as ‘rezonings’), Zoning Ordinance text amendments, Comprehensive Plan Land Use Map amendments, Special Land Use Permits, Variances, Special Exceptions, Appeals of Administrative Decisions and Annexations.

The later sub-parts of those zoning code sections (§5A-18(b) §5D-16(a & b) entail the posting of Public Hearing signs on site and staff mailings informing adjoining property owners of a proposed action. Signage content requirements are based on select portions of §36-66-4.

These two codes, §5A & §5D, are the guide currently used by staff for the noticing of zoning actions. In the interim between submission and the hearing, staff completes or observes opportunities for:

- a preliminary review
- the applicant to submit revised and/or amended plans if necessary (pursuant to §5A-6)
- newspaper advertisements
- property owner mailings
- on-site signage
- a substantive, multi-departmental review
- a staff memo to be written and delivered to the Board assigned to hear the application seven days in advance of the Hearing.

The schedule for these reviews and actions was developed by staff and approved by the City Council, pursuant to §5A-6(a). The most-recent discussions about the process and procedures center around the time at which the applications are made public, the frequency of the notices, and the size of the signs posted on site when required.

The items specifically addressed by the City Council that need to be addressed by this Public Hearing process are:

- Amend current code language to create a size requirement of on-site signage of 12sqft (§5A-18(b)(2)(b) and §5D-16B). *Staff is currently researching the price for these new signs, both materials and labor. Staff further recommends that the applicant pay for the installation of these signs and show evidence that the sign was successfully and properly erected on site.*
- Amend the requirement to increase the size of the text on signs to 4 inches (§5A-18(b)(2)(b) and §5D-16B).
- Amend the verbiage related to adjoining property owner mailings to increase the distance to 500 feet from 250 feet. (§5A-18(b)(1) and §5D-16A).
- Require the posting of the agenda and board packages to the website for all boards. *This is currently department policy, but not specifically codified in the zoning ordinance. Staff has been cautioned on more than one occasion by the City Attorney against codifying more stringent requirements than required by State Law with regard to noticing and the dissemination of information in a public manner.*
- Require that the posting to the city website of agenda with backup information be made at the time that signs are posted/letters mailed/Crier ads run (essentially no less than 15 days prior to the Public Hearing). *It is not anticipated that this would be a challenge to implement as a policy change, but staff cautions against implementing the procedure as a code requirement.*
- Signs for the ZBA and signs for the Mayor & City Council process should be different colors for viewer clarity. *Again, it is not anticipated that this would be a challenge to implement as a policy change, but staff cautions against implementing the procedure as a code requirement.*

### Community Council

At their regular August 2009 meeting, the Community Council deliberated the above conversation points. The initial free-formed discussion began with an explanation by staff of the purpose of the amendment, and that the side effect of codifying many of the above items will be the lengthening of the process. It was generally agreed upon by the Community Council that more noticing of the Community Council meetings is a good thing, but the lengthening of the process was a negative consequence of that additional noticing.

Following the early discussion, a number of motions were made relating to the above bullet points:

1. A motion to amend §5A-18(b)(2)(b) and §5D-16B, increasing the size of Public Hearing signage to 12 square feet: **Motion opposed (7-0)**, as 12sqft was viewed as too big. The size of sign should only be large enough to accommodate #2, below.
2. A motion increasing the text size of Public Hearing signage: the Community Council believes 4 inches is too big. 2 ½ inches maximum is fine. However lettering should be printed, never hand written. **(Motion approved 7-0)**
3. A motion to increase the mailing notification distance from the subject property: Yes, an increase of an additional 250 feet for a total of 500 feet **(Motion approved 5-2** with Crean and Dwyer opposed).
4. A motion to address requiring staff to post the agenda with backup info to the city website at the time that signs are posted/letters mailed/Crier ads run, as well as codifying the color of Public Hearing signs in code itself: **Motion opposed on all counts.** The Community Council embraces the idea and supports making those changes as a matter of staff internal policy, but is opposed to the idea of putting that specific language in the zoning ordinance.

Further recommendations about the Community Council process were made at the same meeting:

1. Some on the Community Council feel that they need to be able to table applications for a month. Mr. Cosgrove and Mr. Dwyer were opposed to this idea.
2. The Community Council doesn't feel they need to get packets when the notices are posted. They prefer the system that is in place today.
3. It was noted at the meeting that the size of the legal ads published in *The Crier* is acceptable. However, staff is to ensure that the ads don't get smaller. *It should be noted that staff has no editorial authority to mandate the size of Public Hearing advertisements in The Crier.*

### **Planning Commission**

At their September 8, 2009 Public Hearing, the Planning Commission considered the input from the Community Council as well as conducted their own panel discussion on the proposed text amendment. The motion put forward and approved 4-0 was to change the code language appropriately to affect the following changes:

1. On-site signage, when required, shall expand to 12 square feet.
2. All text on signage shall be printed (not hand-lettered) and no smaller than 3 inches tall.
3. Increase the distance for Adjoining Property Owners mailings to 500 feet.
4. Signage displayed shall be different colors for different actions, as determined by staff, e.g. blue for variance items, red for special land use permits, yellow for rezonings, etc.
5. Specifically reference, either in code or on application documents, that the cost of signage is specifically an add-on to the applicant.

The Commissioners do not wish to accelerate the timeline for when staff memos are disseminated, nor do they seek to specifically codify the process for when memos are generated and distributed. The policy for those actions should remain staff policy and not appear as a more stringent standard in the text of the zoning ordinance.

### **Recommendation**

Staff is not opposed to implementing the text amendments to signage, billing and mailing standards, such as sign square footage, color, text height and adjoining property owner mailing distances. However, following the advice of the City's legal team, staff agrees that it is **not recommended** to codify more stringent requirements than required by State Law with regard to noticing and the time, manner & place for the dissemination of information in a public manner, such as staff reports and on-site signage. Those requirements can be affected by the adoption by the Council of an official policy document for the Community Development department, with the same effect.

If it were the pleasure of the Council to amend the noticing requirements in the city's zoning ordinance to a more stringent standard than state law, the amendment should center more around the scheduling for the Zoning Board of Appeals tract for applications, more so than the Mayor & City Council tract, because most of the discussion thus far has centered around the Zoning Board of Appeals process.

If those changes suggested at the October 19, 2009 Council Work Session are to be made, then staff's recommendation would be to make those add/deletes to the zoning ordinance consistent with the changes noted in the attached ordinance document.

**AN ORDINANCE AMENDING CHAPTER 27 OF THE CITY OF DUNWOODY CODE OF ORDINANCES BY AMENDING CERTAIN PUBLIC NOTICE REQUIREMENTS FOR ZONING ACTIONS**

**WHEREAS,** the City of Dunwoody Zoning Ordinance, Chapter 27 of the City of Dunwoody Code of Ordinances, currently delineates certain requirements for sign postings on properties notifying the property owners of a pending zoning action; and

**WHEREAS,** the City Council, in an attempt to make sure that the citizens of Dunwoody are aware of all the zoning actions that proceed through the Council, including rezonings, variances, land use permits, etc.; and

**WHEREAS,** in order to provide for an easier notice to the citizens of Dunwoody of the proposed zoning actions, it may be prudent to increase the size of the signs and lettering on those signs that are posted on surrounding and adjacent properties; and

**WHEREAS,** the Community Council met at their regular session in August, 2009 to discuss the proper implementation of these recommendations and the Planning Commission met on September 8, 2009 to consider same; and

**WHEREAS,** A properly-advertised public hearing has been held on September 21, 2009 during the First Read of this Ordinance and the Second Read of this Ordinance and adoption is being held on October 26, 2009.

**THEREFORE,** Mayor and City Council of the City of Dunwoody hereby ordain as follows:

**Section 1:** The City of Dunwoody Zoning Ordinance, Chapter 27 of the City Code of Ordinances, is hereby amended by amending Section 5A-18 (Notice of Public Hearings) to read as follows:

**Sec. 5A-18. Notice of Public Hearings.**

(a) For any zoning decision initiated by the City, at least fifteen (15) but not more than forty-five (45) days prior to the date of the public hearing before the City Council, the City shall cause to be published within a newspaper of general circulation within the territorial boundaries of the County a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(b) For any zoning decision initiated by a party other than the City, notice of the public hearing shall be provided as follows:

(1) Written notice of the proposed zoning decision shall be mailed by via first class mail by the Community Development Director or designee to all property owners within ~~two hundred fifty (250)~~ five hundred (500) feet of the boundaries of the subject property, as such property owners are listed on the tax records of the City of Dunwoody, at least fifteen (15)

days before the public hearing before the planning commission and not more than forty-five (45) days prior to the date of the public hearing before the City Council, which states the nature of the proposed change, and the date, time, and place of the public hearing before the planning commission and the City Council; and

(2) The director of the department of planning or the director's designee must post at least one sign on the road frontage on the subject property at least eight (8) days prior to the Community Council Meeting and at least fifteen (15) days before the hearing before the planning commission and not more than forty-five (45) days prior to the date of the public hearing before the City Council.

(A) At least one (1) sign shall be posted on each street on which the subject property has frontage. One (1) additional sign shall be posted for each additional five hundred (500) feet of frontage or fraction thereof in excess of five hundred (500) feet of frontage on each street on which the subject property has frontage.

(B) Signs shall be double-faced and posted so that the face of the sign is at a right angle to the street to allow the signs to be read by the traveling public in both directions. All signs shall be no smaller than ~~six (6)~~twelve (12) square feet, in a color designated by the Community Development Director or his/her designee, with printed lettering on the signs at least ~~two (2)~~three (3) inches in size.

(C) The sign shall state the nature of the proposed zoning decision and the date, time and place of the Community Council Meeting, public hearing before the planning commission and the City Council. The Community Development Director, or designee, shall sign an affidavit attesting to the posting of signs in accordance with the requirements herein, and shall photograph each sign as evidence of its proper posting.

(D) The cost of all signs posted, and all notice mailings sent, pursuant to this section shall be specifically paid by the applicant in addition to all other applicable application costs.

(3) The City shall cause a notice of the public hearing regarding the proposed zoning decision to be published in a newspaper of general circulation within the County at least eight (8) days before the Community Council Meeting and a separate notice at least fifteen (15) days prior to the hearing before the planning commission and not more than forty-five (45) days prior to the public hearing before the City Council. The notice shall include the date, time and place of the Community Council Meeting, hearing before the planning commission and the public hearing before the City Council, the location of the property, the present zoning

classification of the property, and the proposed zoning classification of the property.

**Section 2:** The City of Dunwoody Zoning Ordinance, Chapter 27 of the City Code of Ordinances, is hereby further amended by amending Section 5D-16 (Notice of Public Hearings) to read as follows:

**Sec. 5D-16. Notice of Public Hearings.**

Notice of public hearing before the board on any application for appeal, variance, or special exception shall be provided as follows:

(a) Written notice of the nature of the proposed application, and the date, time, and place of the public hearing before the board shall be mailed by first class mail to all property owners within ~~two hundred fifty (250)~~ five hundred (500) feet of the boundaries of the subject property as measured by use of the official zoning maps, and as such property owners are listed on the tax records of the City of Dunwoody, at least ~~fifteen~~ thirty (30) days before the public hearing before the board;

(b) Signs of no less than twelve (12) square feet, in a color designated by the Community Development Director or his/her designee, shall be posted within the public right-of-way or on the subject property at least ~~fifteen~~ thirty (30) days before the hearing before the board. One (1) sign shall be posted for each five hundred (500) feet of street frontage or fraction thereof along each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign is at a right angle to the street in order that said signs can be read by the traveling public in both directions. The lettering on the signs shall be printed and at least ~~one (1)~~ three (3) inches in size and the sign shall state the nature of the proposed application and the date, time and place of the public hearing before the board; and

(c) Notice of the nature of the proposed application and the date, time and place of the public hearing before the board shall be published in the newspaper of general circulation within the county in which are carried the legal advertisements of the county at least ~~fifteen~~ thirty (30) days prior to the date of the hearing before the board and not more than forty-five (45) days prior to the date of the hearing before the board.

(d) The cost of all signs posted, and notice mailings sent, pursuant to this section shall be specifically paid by the applicant in addition to all other applicable application costs.

**Section 3:** This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

**SO ORDAINED**, this \_\_\_ day of \_\_\_\_\_, 2009.

[SIGNATURES ON FOLLOWING PAGE]

Approved:

\_\_\_\_\_  
Ken Wright, Mayor

ATTEST:

Approved as to Form and Content:

\_\_\_\_\_  
Sharon Lowery, City Clerk  
(Seal)

\_\_\_\_\_  
Brian Anderson, City Attorney