



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2015

AGENDA TITLE: Supplemental Information:

Second Reading and consideration of a motion to adopt as an emergency Ordinance No. 8069, setting the ballot title for a proposed initiated charter amendment that would create Neighborhoods' Right to Vote on Land Use Regulation Changes

PRESENTER/S

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EXECUTIVE SUMMARY

The purpose of this agenda memorandum is to provide the council with information that describes the initiative related to neighborhoods' right to vote on land use regulation changes; and initial thoughts on implementation of the initiative if it passes at the November 3, 2015 election.

This information supplements the information that was included in the regular city council packet. Given the time and work effort required to put this information together, this information did not go out with the rest of the city council packet.

BACKGROUND

Currently, any substantive changes to the city's land use code (title 9) require consideration of an ordinance with a recommendation by Planning Board and ultimate decision by City Council. When council acts on an ordinance it goes into effect 30 days after the decision and the change becomes law. The 30-day period after the council vote

enables citizens to gather signatures to require a referendum before the ordinance becomes effective. If 10 percent of the city's entire voting population were to sign a petition, it would require reconsideration of the ordinance by City Council and potentially a referendum (public vote) on the ordinance.

ANALYSIS

This proposed initiative can be summarized as extending the charter's referendum period for certain ordinances relating to land use code changes from 30 days to 60 days and instead of gathering signatures for citywide vote, would allow individual areas of the city to vote on whether the change should be effective in those areas. The city council would be required to create these voting areas. All areas with at least one of the following zone districts must be included in one of the voting areas: MH, RE, RL-1&2, RM-1,2,&3, RMX-1&2, RH-1-7, or RR-1&2. Other areas need not be included, although there is no prohibition from doing so. Because there are residential uses permitted in all city zone districts and the initiative only requires the named zone districts to be included in neighborhoods, the initiative does not apply to all residential areas.

Definition of Residential Neighborhoods. Residential Neighborhoods are a contiguous area reasonably demarcated by the City that include the 66 neighborhoods named in the petition. The City Council has the authority to "reasonable demarcate" the neighborhoods. The proponents of the initiative suggest that this decision is itself subject to the 60 day voting requirement. The council's authority to create the voting neighborhoods is at the beginning of the initiative. There is language at the end that makes council's decision to combine neighborhoods subject to the initiative's referendum procedure. It is open to interpretation whether this applies to the original creation of the neighborhoods or only to a subsequent decision to combine two or more for a particular vote. The council demarcated neighborhoods may contain properties within other zoning districts. A vote in the neighborhood would apply within that neighborhood regardless of zoning.

Changes eligible for a neighborhood vote. Neighborhoods would have a right to vote on any change to a city land use regulation affecting their neighborhood that would:

- increase the maximum allowable size, height, or density of any residential development;
- increase the maximum allowable occupancy limits of any residential development;
- change allowable uses for any residential zoning district identified in this Section as a zoning district that is subject to this Section;
- reduce on-site parking requirements of any residential development;
- reduce required setbacks of any residential development;
- reduce solar access protection of any residential development;
- change the zoning district designations or the regulations applicable to existing residential zoning districts such that any of the aforementioned changes are enabled to occur;

Matters not subject to a neighborhood vote. The initiative would apply only to changes in land use regulations. It would not apply to site-specific development reviews, such as site reviews, use reviews, variances, or concept reviews. It also would not apply to annexations, because these do not occur in existing neighborhoods. Finally, it would not apply to initial zoning, because initial zoning is not a change of a land use regulation.

There is an open question whether the initiative would apply only to changes to title 9 or whether it would include changes in other areas, specifically title 10. Title 9 is the land use code. The initiative refers to “land use regulations.” However, it also includes occupancy, which is in both title 9 and title 10. It is also not clear whether changes that affect residential neighborhoods in other sections of the code would be subject to this new referendum procedure. For example, marijuana businesses are not permitted in residential zone districts. If this were changed, it is not clear whether this would be a land use regulation under this initiative. These issues would need to be addressed by council.

Petition procedures. No land use regulation subject to the initiative would be effective until sixty days after the approval of a change. Within the 60 day period, a neighborhood affected by the proposed regulation, following the existing referendum procedures, could submit to the city clerk a petition containing signatures of at least 10% of registered electors within that neighborhood. If the submitted petition meets the referendum requirements, council would have to either reconsider the land use regulation change or schedule a vote.

Voting procedures. The city would be required to hold a separate election for each neighborhood submitting a petition certified to meet the referendum requirements. Until the election is held, the land use regulations would not go into effect for the neighborhoods whose petitions are certified. The city would be required to pay for all election costs. The County has estimated that an election would cost between \$1 and \$3 per voter. The cost of the election depends upon several factors, including whether the election is coordinated with another election, the number of other jurisdictions sharing the costs and whether the additional ballot measure adds an additional page to the ballot. The city might also consider hiring a private company to conduct the election.

Multiple neighborhoods. If a land use regulation change applies to multiple neighborhoods, a separate election would be required for each neighborhood that submits a petition. The results of each separate neighborhood vote would apply only to that neighborhood.

Tasks to be completed if the “Neighborhoods’ Right to Vote on Land Use” petition is approved:

- A. Adopt an ordinance to define the neighborhoods.

1. Hire a consultant to provide recommendations on how to create neighborhood voting districts
 2. City Council to vote to create neighborhoods.
 3. The council might want to consider forming a commission to recommend neighborhood boundaries.
 4. The City would be responsible for redrawing neighborhoods: As development occurs and neighborhoods change or limit zoning requirements, differently around the city, new neighborhoods would need to be drawn to create equitable districts.
- B. Consider an ordinance setting forth the land use regulations subject to the initiative.
- C. Delay any land use code changes in process until procedures are in place.

Answers to Frequently Asked Questions:

1. How many neighborhoods will there be?

This will be decided by council. The initiative petition lists 66 neighborhoods, but says that council shall reasonably demarcate the voting neighborhoods.

2. Would this allow a neighborhood to vote to stop a particular project?

No. The initiative would not apply to individual applications. An individual project could be affected if the project required a change in a land use regulation.

3. Would a neighborhood be permitted to vote on a change in another neighborhood?

No. The initiative says that the vote can only prohibit a change in the neighborhood subject to the vote.

4. When would the elections be held?

The initiative refers to Charter section 47. This section provides that the election be held at the next general election or the council can, by a two-thirds vote, schedule a special election. Any election must be no sooner than thirty days after the petitions are submitted.

5. What happens if several neighborhoods vote and some vote in favor and some vote against?

In that case, the regulation would be effective only in the neighborhoods that did not vote and those that voted favorably. It would not be effective in the neighborhoods that voted against the regulation change.

Neighborhoods' Right to Vote on Land Use Regulation Changes:
Initiative petition language

Section 43A. Neighborhoods' Right to Vote on Land Use Regulation Chang

The purpose of this Section is to ensure that residents of neighborhoods have a voice in changes to land use regulations that may have impacts on their quality of life, neighborhood character, or property values. Such changes may include but are not limited to those that increase the maximum allowable building heights, floor areas, or occupancy limits, and changes in allowable uses within residential neighborhoods.

For purposes of this Section, "residential neighborhood" shall mean a contiguous area reasonably demarcated by the City, including the neighborhoods commonly known by the names listed in Appendix A, as well as other neighborhoods the City may reasonably identify, and that contains at least a portion of the MH, RE, RL-1&2, RM-1,2&3, RMX-1&2, RH-1-7, or RR-1&2 zoning districts as set forth in the Boulder Revised Code as of the passage of this Section.

No proposed changes to city regulations for one or more residential neighborhoods that would do one or more of the following for part or all of any residential neighborhood:

- increase the maximum allowable size, height, or density of any residential development;
- increase the maximum allowable occupancy limits of any residential development;
- change allowable uses for any residential zoning district identified in this Section as a zoning district that is subject to this Section;
- reduce on-site parking requirements of any residential development;
- reduce required setbacks of any residential development;
- reduce solar access protection of any residential development;
- change the zoning district designations or the regulations applicable to existing residential zoning districts such that any of the aforementioned changes are enabled to occur;

shall become effective until sixty days following the approval of such change. However, if within such sixty day period, a petition meeting the requirements of Section 45 and signed by ten percent of the registered electors of a residential neighborhood affected by such change is filed with the city clerk requesting that such change be **submitted to a vote of the electors of that neighborhood**, then such change shall not be effective for that neighborhood until the procedures set forth in Sections 46 and 47 have been completed. For purposes of filing such a petition, fulfilling the requirements of Sections 46 and 47, and voting in the subsequent neighborhood election, the "electors" shall be only those registered electors that use an address in that neighborhood as their residence for voter registration purposes.

Where changes to land use regulations that are subject to this Section affect multiple residential neighborhoods, there shall be a separate election for each residential neighborhood that has submitted the required petition; and the results of that election shall apply only to that neighborhood.

The City Council may combine contiguous residential neighborhoods to function as a single residential neighborhood for purposes of this Section. However, the inclusion of residential

neighborhoods in such a combination shall be subject to the above referendum process carried out by any of the individual neighborhoods.

The City shall pay for the costs of any election required by this Section.

Initiative Appendix A

Bear Creek, Boulder Meadows, Buena Vista, Carolyn Heights, Catalpa Park, Centennial, Chautauqua, Crestview, Dakota Ridge, Devil's Thumb, East Aurora, East Central, East (Lower) Chautauqua, East Foothills, Flatirons, Foothills Community, Forest Glen, Four Mile Creek, Frasier Meadows, Goss Grove, Grandview, Grant, Gunbarrel, Hartford, Hawthorne, Heatherwood, Hillcrest/Panorama Heights, Hillside, Holiday, Iris Hollow, Juniper / Kalmia, Keewaydin, Keewaydin East, Kendall, Kings Ridge, Majestic Heights, Mapleton Hill, Mapleton Mobile Home Park, Martin Acres including Highland Park, Newlands, Noble Park, North 26th Street, North Wonderland, Northbriar, Norwood / Quince, Old North Boulder, Orchard Park, Park East, Parkside, Pinon, Poplar, Sale Lake, San Juan del Centro, Shanahan Ridge, South 45th, Steel Yards-Boulder Junction, Table Mesa North, Table Mesa South, Tantra Park, Telluride, University Heights, University Hill, Vista Village, West Pearl, Whittier, Wonderland Hills