

REQUESTED COMMISSION ACTION:

Consent
 Ordinance
 Resolution
 Consideration/ Discussion
 Presentation

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.2305, "PUBLIC HEARING SCHEDULING AND NOTICE" TO EXPAND THE TIME PERIOD FOR REQUIRED PUBLIC NOTICE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

Several applications currently require notices to be mailed five (5) calendar days prior to the Advisory Board Hearing. Due to recent routing changes with the USPS, this number of days appears to no longer provide adequate notice of hearings. During the Audience To Be Heard portion of the October 27, 2015 City Commission hearing, Staff was directed to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days (copy of Minutes attached). Staff has already implemented this new procedure and the text amendment will codify the requirement. The text amendments were unanimously recommended at the December 16, 2015 Planning and Zoning Board meeting (A copy of the draft Minutes are attached).

- (1) Origin of request for this action: Development Services Dept.
- (2) Primary staff contact: Robin M. Bird/ Karen Friedman *KBF* Ext. 7792
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

| DEPARTMENTAL COORDINATION | DATE | DEPARTMENTAL RECOMMENDATION | DEPARTMENTAL HEAD SIGNATURE |
|-----------------------------|--------------------|-----------------------------|---------------------------------|
| Dev. Services | 12/08/2015 | Approval | Memo #15-649 <i>[Signature]</i> |
| City Attorney | | <i>[Signature]</i> | Memo #16-366 <i>[Signature]</i> |
| X Planning and Zoning Board | | Approval | Memo #16-003 (01/12/2016) |
| X City Manager | <i>[Signature]</i> | | <i>[Signature]</i> |

| Ordinance Workshop | Resolution | Consideration |
|--|-------------------------------|----------------|
| 1 st Reading <u>3/8/16</u> | 1 st Reading _____ | Results: _____ |
| Approved | | |
| 2 nd Reading <u>3/22/16</u> | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |



City Attorney's Communication #2016-366
January 11, 2016

TO: Karen Friedman, AICP, Principal Planner
FROM: Mark E. Berman, City Attorney
RE: Ordinance Amending Section 155.2305., "Public Hearing Scheduling and Notice"

As requested in your memorandum of December 17, 2015, Department of Development Services Memorandum No. 15-668, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.2305., "PUBLIC HEARING SCHEDULING AND NOTICE," TO EXPAND THE TIME PERIOD FOR REQUIRED PUBLIC NOTICE OF PUBLIC HEARINGS ON ZONING RELATED MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Please carefully review the ordinance to ensure that it meets with your request.


MARK E. BERMAN

/jrm
l:cor/dev-srv/2016-366

Attachment

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.2305., "PUBLIC HEARING SCHEDULING AND NOTICE," TO EXPAND THE TIME PERIOD FOR REQUIRED PUBLIC NOTICE OF PUBLIC HEARINGS ON ZONING RELATED MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.2305., "Public Hearing Scheduling and Notice," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.2305. PUBLIC HEARING SCHEDULING AND NOTICE

...

C. PUBLIC HEARING NOTICE

1. General Notice Requirements

Public notice of the public hearing on an application shall be required as shown in Table 155.2305.C: Public Hearing Notice Requirements, for the type of application and the type of notice. In computing the time periods prescribed for notices, the day the notice is published or postmarked shall not be included, but the day of the hearing shall be included.

TABLE 155.2305.C: PUBLIC HEARING NOTICE REQUIREMENTS ¹
CC = CITY COMMISSION ZBA = ZONING BOARD OF APPEALS P&Z = PLANNING AND ZONING BOARD
AAC = ARCHITECTURAL APPEARANCE COMMITTEE HPC = HISTORIC PRESERVATION COMMITTEE

| APPLICATION TYPE | NOTICE REQUIREMENT | | |
|--|--|---|---|
| | TIMING OF PUBLISHED NOTICES | MAILED NOTICES | |
| | | TIMING | RECIPIENTS |
| ... | ... | ... | ... |
| City-initiated General Zoning Map Amendment (Rezoning) proposing to reclassify parcel(s) involving less than 10 contiguous acres | <ul style="list-style-type: none"> • Publish notice of the P&Z public hearing at least 5 calendar days before the hearing date • Publish notice of the CC public hearing at least 10 calendar days before the hearing date | <ul style="list-style-type: none"> • Mail notice of the P&Z public hearing at least 5-calendar <u>6 business</u> days before the hearing date • Mail notice of the first CC public hearing at least 30 calendar days before the hearing date | <ul style="list-style-type: none"> • Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application ⁵ • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application |
| City-initiated Site - Specific Zoning Map Amendment (Rezoning) proposing to reclassify parcel(s) involving less than 10 contiguous acres | | | |
| General Zoning Map Amendment (Rezoning) initiated by other than the city | | | |
| Site-Specific Zoning Map Amendment (Rezoning) initiated by other than the city | | | |
| Planned Development | | | |
| Special Exception | Publish notice of the public hearing at least 5 calendar days before the hearing date | Mail notice of the public Hearing at least 5-calendar <u>6 business</u> days before the hearing date | <ul style="list-style-type: none"> • Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application ⁵ • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application |
| Variance | | | |
| Major Administrative Adjustment | | | |
| Major Certificate of Appropriateness | | | |
| Major Temporary Use Permit | | | |
| Interim Use Permit | Appeal ² | Mail notice of the public Hearing at least 5-calendar <u>6 business</u> days before the hearing date | <ul style="list-style-type: none"> • Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application ⁵ • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application |
| ... | | | |

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

:jrm
1/5/16
L:ord/ch155/2016-83

meant for the Land Use Plan Amendment and not intended for this part of the presentation.

Mr. Stacer mentioned downzoning and that we have to be careful when downzoning a property. Mr. Syrek asked about the one acre sites being exempt from the affordable housing requirements. Mrs. Gomez stated that this code change was voted on and recommended by this Board very recently.

6. Chapter 155 Zoning Code Text Amendments, Public Hearing Notice Requirements

Staff is recommending text amendments to the Zoning Code regarding increasing the public hearing noticing deadline from five (5) calendar days to six (6) business days.

Karen Friedman introduced herself to the Board and stated that Staff is recommending text amendments to the Zoning Code regarding public hearing notice requirements. Staff was given direction by the City Commission at a recent hearing to revise the mailed notice requirements for several applications that are noticed for the advisory boards. Several applications currently require notices to be mailed five (5) calendar days prior to the Advisory Board Hearing. Due to recent routing changes with the USPS, this number of days appears to no longer provide adequate notice of hearings. The City Commission directed Staff to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days. Mrs. Friedman added that Staff is recommending approval.

Mr. Evans asked how the six business days were derived. Karen Friedman stated that it was a balance between requiring the additional notification days and trying to keep a reasonable application deadline. Mrs. Friedman added that Staff has informally been implementing this change in the office since the direction from the City Commission was given to Staff.

Mr. Evans asked if there are statutory requirements set forth by the State. Carrie Carver (City of Pompano Beach Assistant City Attorney) stated that we have home rule powers so we put our notice requirements in the land use code and the City Attorney's office is very supportive of the code change to six business days. This is more notice than other local governments are providing. Per Florida Statutes, we need to provide "reasonable notice." Mrs. Sarver added that this change is only for the mailed notices.

Mr. Syrek asked if we could advertise the Planning and Zoning Board items on Channel 78 (include item name and address and omit legal description). More discussion took place concerning the display of the agenda items on television. Mrs. Sarver stated that we could advertise on television as long as we have met our noticing requirements set forth by the code (mailed notices and/or publishing in the Sun Sentinel). Mrs. Sarver told Mr. Syrek that she can relay his suggestions to the Public Information Officer.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. // kem

Mr. Evans asked if the neighborhood associations in the City are accounted for and Mr. Syrek responded that there is a list on the City's website. More discussion took place concerning neighborhood associations.

Mr. Stacer clarified that the Atlantic Tower building is proposed to be eight stories and not fifteen as Mr. Syrek alluded to.

MOTION was made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to increase the public hearing noticing deadlines. All voted in favor of the above motion; therefore, the motion passed.

7. Chapter 155 Text Amendments, Special Exception Review Criteria

Staff is recommending revisions to the Special Exception review criteria in the Zoning Code.

Karen Friedman introduced herself to the Board and stated that this proposed text amendment is related to the temporary moratorium and the standards and recommendations that were reviewed by the Planning and Zoning Board at the special set hearing (November 30th). Staff is recommending requiring Special Exception approval for several existing uses (that are currently permitted uses) as well as for several new uses that will be identified in the code which will require special exception approval. Staff reviewed the Special Exception Review Criteria, specifically Staff analyzed the existing review standards and the review criteria utilized by the City between 1994 through 2012. Mrs. Friedman stated that a line by line analysis was done and it is included in the Board's backup. Based on this analysis, Staff is recommending revisions to the review criteria:

Criteria #5 – The text amendment would clarify that appropriateness and compatibility is with neighboring lands (a definition of neighboring is also inserted as Criteria #12). The text amendment would clarify how appropriateness and compatibility is determined.

Criteria #7 – The text amendment would clarify how the properties would need to be buffered that addresses compatibility with neighboring lands.

Criteria #9 – The text amendment would clarify that traffic and issues related to vehicular movement would need to address the neighborhood.

Criteria #10 – The text amendment adds back in the consideration of the need for this use in the neighborhood, including the availability of the use.

Mrs. Friedman stated that staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

Mr. Stacer asked if the Board had any questions and received no response.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. // kem

**PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-003**

DATE: January 12, 2016
TO: City Commission
FROM: Planning and Zoning Board/ Local Planning Agency
SUBJECT: Proposed Text Amendments to Zoning Code,
Table 155.2305.C: Public Hearing Notice Requirements

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on December 16, 2015, the Board considered proposed text amendments to Article 2 (Administration) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-649.

Within Article 2 (Administration) Staff recommends revising Table 155.2305.C: Public Hearing Requirements to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days.

With a unanimous vote for the approval of the amendments, it is the recommendation of the Board that the text amendments be approved.


Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency



MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-649

DATE: December 8, 2015
TO: Planning and Zoning Board
VIA: Robin M. Bird, Director of Development Services *RB*
FROM: Karen Friedman, AICP, Principal Planner *KBF*
RE: Text Amendments to Zoning Code
Table 155.2305.C: Public Hearing Notice Requirements

Staff is recommending text amendments to the Zoning Code regarding public hearing notice requirements.

Several applications currently require notices to be mailed five (5) calendar days prior to the Advisory Board Hearing. Due to recent routing changes with the USPS, this number of days appears to no longer provide adequate notice of hearings. During the *Audience To Be Heard* portion of the October 27, 2015 City Commission hearing, Staff was directed to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days. Staff has already implemented this new procedure and the text amendment will codify the requirement.

Staff's Request

Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

155.2305. PUBLIC HEARING SCHEDULING AND NOTICE

C. Public Hearing Notice

1. General Notice Requirements

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| TABLE 155.2305.C: PUBLIC HEARING NOTICE REQUIREMENTS ¹ | | | |
|---|--|--|---|
| CC = City Commission ZBA = Zoning Board of Appeals P&Z = Planning and Zoning Board AAC = Architectural Appearance Committee HPC = Historic Preservation Committee | | | |
| Application Type | Notice Requirement | | Mailed Notices |
| | Timing of Published Notices | Recipients | |
| | Timing | | |
| ... | | | |
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| Variance | | | |
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| Major Certificate of Appropriateness | | | |
| Major Temporary Use Permit | | | |
| Interim Use Permit | | | |
| Appeal ² | | | |
| ... | | | |



City of Pompano Beach, Florida

| Names of Commrs. | M | S | Y | N |
|---|---|---|---|---|
| <p>CITY COMMISSION MEETING MINUTES October 27, 2015</p> <p>PAGE 11</p> <p><u>AUDIENCE TO BE HEARD – CONTINUED</u></p> <p><u>Zoning Board of Appeals Notices</u> – M. Ross Shulmister, 560 Southeast 12th Street, Pompano Beach, FL, stated that he is addressing the Commission in the capacity as a resident of Pompano Beach. He stated that on October 15, 2015, the Zoning Board of Appeals (ZBA) considered a controversial measure, which has been spoken about earlier by a number of speakers. He then explained in detail the procedure followed by both the Chairperson and the request to be heard by a resident and the outcome of the ruling to proceed with the variance.</p> <p>Additionally, Mr. Shulmister informed that he provided a proposal to the City Commission to consider the seven points of changing Section 155.2305 as follows:</p> <ol style="list-style-type: none"> 1) Instead of five (5) calendar days mailing, change it to six (6) business days. He indicated that the proposal defines what a business day is. 2) The staff's affidavit is only prima facie evidence, not conclusive, and it should be prima facie. 3) The postmark defines the mailing, if there is a postmark. 4) If there were no postmarks, it would be considered one to be mailed one (1) day after the date in the affidavit. If there is a controversy with the ZBA as to the date of the notice, that should be considered before going any further. The Board would then have three alternatives – they could proceed, table or a combination of tabling and proceeding. <p>Comr. Phillips asked if the Commission has the ability to change those types of ordinances.</p> <p>Mayor Fisher responded that the Commission does have the ability to change ordinances of the City.</p> | | | V | V |
| | | | | |

CITY COMMISSION MEETING MINUTES

October 27, 2015

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AUDIENCE TO BE HEARD – CONTINUED

Zoning Board of Appeals Notices – M. Ross Shulmister, 560 Southeast 12th Street, Pompano Beach, FL, stated that he is addressing the Commission in the capacity as a resident of Pompano Beach. He stated that on October 15, 2015, the Zoning Board of Appeals (ZBA) considered a controversial measure, which has been spoken about earlier by a number of speakers. He then explained in detail the procedure followed by both the Chairperson and the request to be heard by a resident and the outcome of the ruling to proceed with the variance.

Additionally, Mr. Shulmister informed that he provided a proposal to the City Commission to consider the seven points of changing Section 155.2305 as follows:

- 1) Instead of five (5) calendar days mailing, change it to six (6) business days. He indicated that the proposal defines what a business day is.
- 2) The staff's affidavit is only prima facie evidence, not conclusive, and it should be prima facie.
- 3) The postmark defines the mailing, if there is a postmark.
- 4) If there were no postmarks, it would be considered one to be mailed one (1) day after the date in the affidavit. If there is a controversy with the ZBA as to the date of the notice, that should be considered before going any further. The Board would then have three alternatives – they could proceed, table or a combination of tabling and proceeding.

Comr. Phillips asked if the Commission has the ability to change those types of ordinances.

Mayor Fisher responded that the Commission does have the ability to change ordinances of the City.



City of Pompano Beach, Florida

| Names of Commrs. | M | S | V | |
|------------------|---|---|---|---|
| | | | Y | N |

CITY COMMISSION MEETING MINUTES

October 27, 2015

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AUDIENCE TO BE HEARD – CONTINUED

Additionally, Mayor Fisher thanked those members who attended the meeting and spoke earlier on an issue with the mailing of the notice for public hearing that needed to be addressed. As well as, he thanked Mr. Shulmister for his suggestions and indicated that the Commission will discuss them to determine how it can be corrected for the future. So there will be enough notice irrespective of where a person resides, whether on the beach or in the western communities.

Comr. Dockswell indicated that Mr. Shulmister has provided the suggestion of how the Code of Ordinances could be changed in the future by providing six business days of notice rather than five calendar days. Therefore, he is inclined to think that the City could work with this or consider something similar to allow more time on the notice, especially since the mailing is taking longer these days. In moving forward, he suggested that the City consider a greater notice requirement so that the affected residents around a zoning or variance change, etc. would be adequately noticed.

Additionally, Comr. Dockswell indicated that with regard to the project, a variance was approved. Since there was an assertion of inadequate notice, which has been dealt with at the hearing, he asked whether the variance is considered not appealable.

Mark E. Berman, City Attorney, responded that it is appealable and explained his understanding of the issue on hand, because he did watch the video of the hearing. He noted that the Assistant City Attorney checked with staff that placed on the record that it was mailed during the appropriate time required by the ordinance. Based on the testimonies provided earlier, it may or may not have resulted in residents getting their mail on time.

Furthermore, they were given the opportunity to speak and apparently, they did not have an opportunity to hire a counsel or take other measures that might have been done. The ZBA chairman was advised by the Assistant City Attorney at the meeting that under the Board rules, the Board could on its own, if it felt in the interest of fairness, to table the matter. No member of the Board made a motion to do that at the meeting. The Chairman did not do that as well. They felt that after the testimony that was presented by the Clerk for the Board everything had been timely mailed; therefore, they could proceed, which they did.