



## Legislation Text

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**TO:** Mayor and Members of City Council

**THRU:** Telly C. Whitfield, Ph.D. - Assistant City Manager

**FROM:** Dr. Gerald Newton, AICP - Development Services Director

**DATE:** August 1, 2022

**RE:**  
City Council Request to increase the mailing notification for land use cases

**COUNCIL DISTRICT(S):**  
All

**Relationship To Strategic Plan:**

FY22 Strategic Plan, Goals and Goal Objectives  
Goal 6: Collaborative Citizen and Business Engagement

Strategic Objective 6.2: To ensure trust and confidence in City government through transparency and high quality customer service

Strategic Objective 6.3: To inform and educate about local government by enhancing public outreach and increasing community dialogue, collaboration and empowerment.

**Executive Summary:**

The City is required by North Carolina General Statutes to notify adjoining property owners on certain land use items. We exceed those standards, and have both local ordinance requirements and a built in option to add to the first-class mailing area within the existing ordinance. This item is the professional recommendation in response to City Council's request to evaluate expanding the notifications from 500 feet to 1,000 feet from the parcel under review. Staff's recommendation is to leverage the flexibility within the existing City Ordinance to make the requested change as a new practice for annexations & related initial zoning, special use permits, variances, and all forms of rezonings.

**Background:**

In an effort to provide even more awareness of the various land use cases, the City Council requested a consideration of impacts be done to move from the current 500 foot radius from parcel notification to 1,000 feet. This is a fourfold land area increase with various increases in notifications

from the current notification. While we use the perimeter of the parcel under review for the distance, for illustration, this example is the simple math of an area with a 500' or 1,000' radius. The minimum land area of property owners notified moves from 5.74 acres to around 23 acres. The related PowerPoint shares examples of how the notifications by first-class mail look and add to those made aware of the case under review. Details of the North Carolina General Statutes (NCGS) notification by mail is shown next.

North Carolina General Statutes 160D have various notification requirements for land use cases. NCGS 160D-602(a) addresses zoning map amendments and requires the property owner and abutting owners to receive first-class letters. NCGS 160D-602(b) provides an option of notice only through placement in the newspaper on large-scale zoning map amendments. NCGS 160D(c) requires notice on the property under consideration. NCGS 160D-406(b) addresses notification for Quasi-judicial procedures that are much the same as for zoning cases. It contains the standard of notifying abutting property owners and adds the local government puts in additional notifications within their development regulations. Property owner initiated annexations follow 160A-58.2 which requires a published notice at least 10 days before the date of the public hearing. 160A-58.55 (city initiated) addresses a series of notification requirements if the city goes after an area for annexation. These involuntary annexations are no longer used in Fayetteville.

We do, however, work to exceed these notifications when zoning cases and special use permits cases are to be heard and considered by the City Council. This is done several ways, the largest being mailings sent around the site under review. Rather than only notifying adjoining (or abutting as the statute term) property owners, we capture all property owners within 500 feet of the outside boundaries of the property under review.

The City also exceeds the notification standards through use of additional signage on the property, interactive Quick Response (QR) codes embedded in all first class notifications, and a variety of notifications in the local newspaper. We also provide notification to Ft. Bragg on development and zoning cases for review of potential impacts to their operations.

The types of items the City has determined to notify persons owning land in the area of the request are administrative, legislative, and quasi-judicial (most being Special Use Permits - heard as Evidentiary Hearings). Each holds varying degrees of standards and discretion when considering the case. More information is shared in the PowerPoint presentation, and mentioned in the next section.

### **Issues/Analysis:**

The fact that the City already has ordinance language that provides for flexibility in notifications seems to make the request one that can be accomplished without any further ordinance changes.

Again, the City Council is the decision-making authority on these land use cases. Staff does have an immediate concern about the unintended impact of expanding the notification area causing a perceived heightened sense of influence by the residents on the land use decision. The concern that the property owners may misunderstand their level of influence on a decision is one that can be handled in the text of the letter itself.

Administrative approvals that include notifications are only for information and possible adjustments to development plans as agreed to by the developer. These are primarily approvals based on

meeting existing codes of the city with no involvement with the City Council.

Legislative Hearings allow any and all input before the City Council takes action on the item in front of them. The decision to approve, deny, approve with agreed upon conditions tend to be measured against the alignment of the City Council approved future land use plan and map. The public's ability to "sway a decision" is a part of the process of these legislative hearings. There is a potential unintended impact of the additional property owners being notified wanting to speak at the hearings and not liking the 15 minute cap per side. This may need to become more flexible.

Quasi-judicial items notifications will allow persons interested to know and then attend the formal Evidentiary Hearings. The issue of understanding who has legal standing in those cases will continue to be handled as under current practices. In a general sense, "Legal standing" is a phrase tied to the court system of determining if the person(s) appealing the outcome have an actual injury or cause to appeal the case. There is an approach of only permitting those with standing to testify in quasi-judicial. In Fayetteville, a broader approach of inclusivity has occurred where speakers are allowed and the attorneys either object or note a challenge of being a qualified witness or not having an identified standing. By inviting property owners to the hearing, through a first-class letter from a set distance from the property under review, there may be an impression of establishing an impact (hence, a theorized defacto standing) that may not exist. No quasi-judicial case is the same so this issue potentially creates issues depending on the case under review. Whether 500' or 1,000' or any other distance beyond those parcels adjoining, this issue is the same of who has a legal standing to demonstrate harm if the case goes through. As such, the distance for quasi-judicial is expected to continue to be handled the same regardless of the distance of the notifications.

Because the statutes are enabling and prescriptive on some of the notifications, there is a high level of flexibility in notification requirements that exceed the state minimums and peers take advantage of that discretion. As an illustration, Cumberland County utilizes a flexible practice of 600' to 800' on rezonings within a town or municipal influence area (MIA) and between 1,100' and 1,300' in the balance of the unincorporated areas. Cumberland County also only notifies abutting property owners of variances. Our current higher standard seems to work with only occasional concerns that would not be met if we decreased our notification radius for only abutting property owner notifications for any "non-rezoning" land use cases (i.e. Special Use Permits).

The above comparison information is included in the related Power Point attachment entitled "Property Owner Notification, Council Request, August 1, 2022".

### **Budget Impact:**

The current price of a first-class stamp is \$0.60. Envelopes and stationary are the additional hard costs. Soft cost impacts are staff time and can be captured. All notification numbers would be different with quick examples showing minimal additional hard costs of under \$40 to over \$250 per case. Staff time in responding to the notifications will increase but are already associated within personnel costs. The aggregated budget impact will vary based on the number of land use applications received during the fiscal year; however, the City of Fayetteville is very fortunate as we are in a growth period while other surrounding communities may not have the same volume or pace.

### **Options:**

1. Continue the existing practice of 500 foot notification of letters for annexations, rezonings, initial zonings, Special Use Permits, conditional zoning.
2. Increase notification to 1,000 feet for all items requiring notification by utilizing the already existing option in the Code of Ordinances, Chapter 30-2.B.12.c.1.c (Public Notification, c. Mailed Notice, 1 *Recipients*, c.) that permits flexibility to provide expanded notice.
3. Change the City Ordinances' text language to reflect a higher standard of first-class notification from the existing 500' to 1,000' for all cases requiring mailed notification per NCGS 160D-602 and 160D-406.
4. Separate the notification requirements to match the other jurisdictions in Cumberland County (only abutting property owners on SUPs, increased and variable on rest)

**Recommended Action:**

PROFESIONAL STAFF RECOMMENDS OPTION 2. City Council moves to increase notification to 1,000 feet for all items requiring notification by utilizing the already existing option in the Code of Ordinances, Chapter 30-2.B.12.c.1.c (Public Notification, c. Mailed Notice, 1 *Recipients*, c.) that permits flexibility to provide expanded notice.

The reason for the recommendation is to meet the City Council's stated request to make more of the community aware of cases coming to the City Council for consideration. There is no guaranteed significant add to the community by doing this, but the costs are also controllable. This option also allows the change without further text amendments and can be adjusted later if there is no discernable increase in public input in the various hearings in front of the City Council.

**Attachments:**

Property Owner Notification, Council Request, August 1, 2022