

**CITY OF WHEAT RIDGE, COLORADO  
INTRODUCED BY COUNCIL MEMBER HOPPE  
Council Bill No. 13  
Ordinance No. 1673  
Series 2019**

**TITLE: AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS CONCERNING PROCEDURES FOR PROTESTS UNDER SECTION 5.10 OF THE HOME RULE CHARTER**

**WHEREAS**, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

**WHEREAS**, the City Council has exercised these powers by the adoption of Chapter 26 of the Wheat Ridge Code of Laws (the "Code") concerning zoning and development; and

**WHEREAS**, Section 5.10 of the Home Rule Charter provides for the filing of protests by adjacent property owners concerning amendments to the restrictions and boundaries of zone districts; and

**WHEREAS**, The Council wishes to provide for procedures to implement Charter Section 5.10,

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:**

**Section 1.** Section 26-112. C.7 of the Code of Laws is amended to read:

7. In the event of a legal protest against such change of zone, under the procedure set forth in section 5-10 of the home rule charter, a zone change shall not be approved except by the favorable vote of three-fourths ( $\frac{3}{4}$ ) of the entire city council. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning ordinance. THE PROCEDURE SHALL BE AS FOLLOWS:
  - a. ALL PROTESTS MUST BE SUBMITTED PRIOR TO THE COMMENCEMENT OF THE PUBLIC HEARING.
  - b. IN THE EVENT THAT A LETTER OF PROTEST IS SUBMITTED PRIOR TO FIRST READING OF THE ORDINANCE FOR A CHANGE OF ZONE, AND SUCH PROTEST HAS BEEN DETERMINED BY THE COMMUNITY DEVELOPMENT STAFF TO MEET THE REQUIRED PROPERTY OWNERSHIP AND AREA REQUIREMENTS OF CHARTER 5.10, THE HEARING SHALL BE CONDUCTED ON THE ORIGINALLY SCHEDULED DATE FOR SECOND READING OF THE ORDINANCE. IF A PROTEST IS SUBMITTED AFTER FIRST READING OF THE ORDINANCE, THE HEARING SHALL AUTOMATICALLY BE CONTINUED TO THE NEXT REGULAR BUSINESS

MEETING OF THE COUNCIL, AND PUBLIC NOTICE OF SUCH CONTINUED HEARING SHALL BE MADE IN THE SAME MANNER AS NOTICE FOR ADOPTION OF ORDINANCES ON FIRST READING AND SETTING THE PUBLIC HEARING THEREON.

- c. PRIOR TO 5:00 PM ON THE NEXT REGULAR BUSINESS DAY FOLLOWING THE DAY UPON WHICH THE PROTEST WAS SUBMITTED, THE COMMUNITY DEVELOPMENT STAFF SHALL REVIEW THE PROTEST TO CONFIRM THE SIGNERS THEREOF AS OWNERS OF THE REQUIRED PROPERTY OWNERSHIP AND AREA REQUIREMENTS OF CHARTER 5.10 AND SHALL PROMPTLY INFORM THE SIGNERS OF THAT DETERMINATION.
- d. IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST DOES NOT MEET THE REQUIRED PROPERTY OWNERSHIP AND AREA REQUIREMENTS OF CHARTER 5.10, THE SIGNERS OF THE PROTEST MAY AMEND THE PROTEST AT ANY TIME PRIOR TO THE COMMENCEMENT OF THE CONTINUED PUBLIC HEARING.
- e. AT THE CONTINUED PUBLIC HEARING, ONLY THE ORIGINAL PROTEST, OR THE ORIGINAL PROTEST, AMENDED AS PERMITTED BY THIS SECTION (THE "AMENDED PROTEST") WILL BE CONSIDERED FOR PURPOSES OF DETERMINING THE PROPER COUNCIL VOTING REQUIREMENTS ON THE MATTER.
- f. IF THE AMENDED PROTEST IS TIMELY SUBMITTED BEFORE THE COMMENCEMENT OF THE CONTINUED PUBLIC HEARING, THE COMMUNITY DEVELOPMENT STAFF SHALL REVIEW THE AMENDED PROTEST TO CONFIRM THE SIGNERS THEREOF AS OWNERS OF THE REQUIRED PROPERTY AND ITS COMPLIANCE WITH THE AREA REQUIREMENTS OF CHARTER 5.10
- g. IF NECESSARY, THE MAYOR SHALL DECLARE A RECESS TO ENABLE THE COMMUNITY DEVELOPMENT STAFF TO PERFORM THEIR REVIEW.
- h. IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST DOES NOT MEET THE OWNER OR AREA REQUIREMENTS OF CHARTER 5.10, THE HEARING MAY BE CONDUCTED AND CLOSED, AND THE COUNCIL MAY ACT WITHOUT THE  $\frac{3}{4}$  MAJORITY VOTING REQUIREMENT.
- i. IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST MEETS THE OWNER AND AREA REQUIREMENTS OF CHARTER 5.10, THE HEARING SHALL BE CONDUCTED AND CLOSED AND THE COUNCIL MAY ACT, SUBJECT TO THE  $\frac{3}{4}$  MAJORITY REQUIREMENT OF CHARTER 5.10.
- j. THE PROTEST AREA AND OWNER REQUIREMENTS OF CHARTER 5.10, WHICH PROVIDE, IN PERTINENT PART:

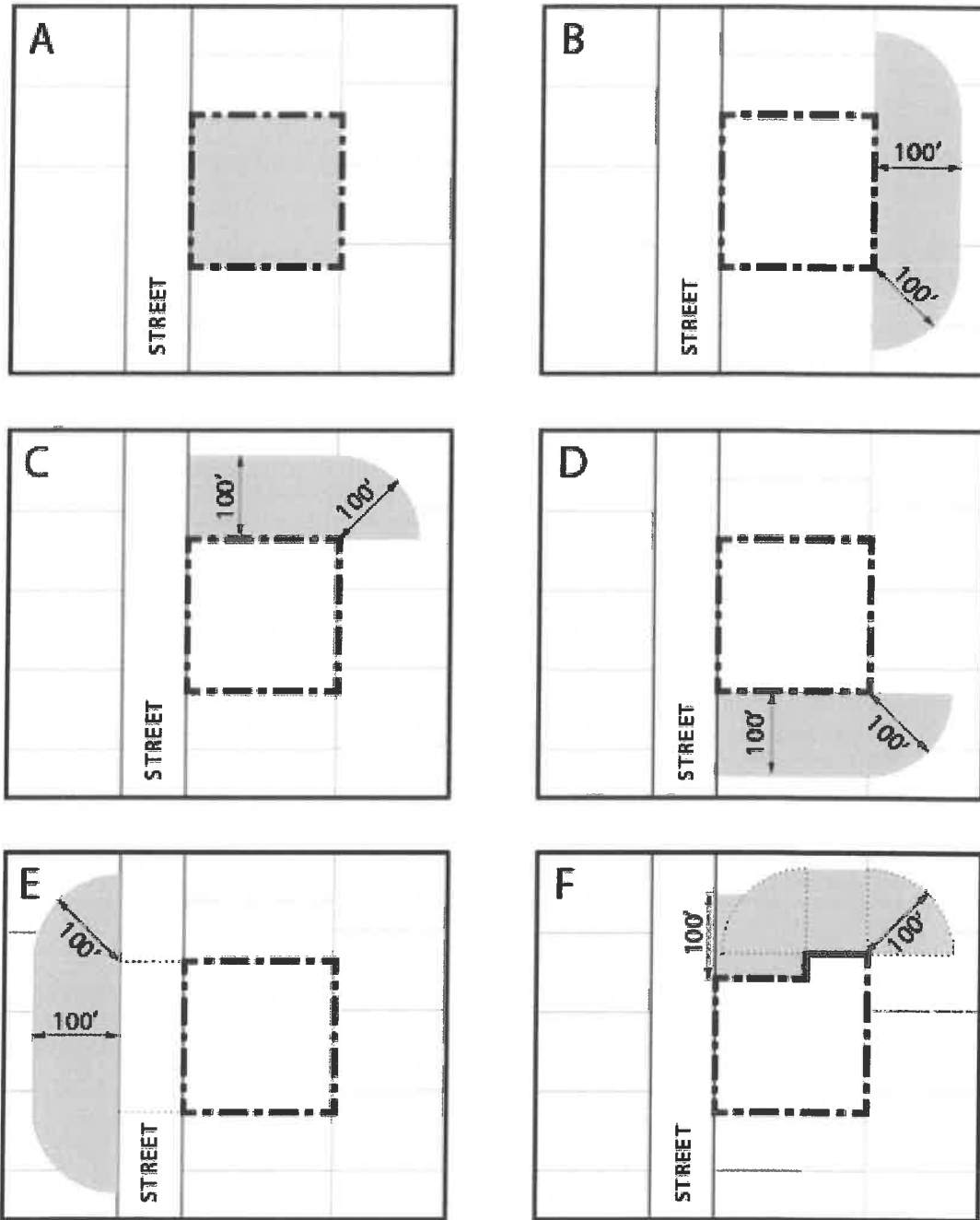
*IN THE EVENT OF A PROTEST AGAINST SUCH CHANGES SIGNED BY THE OWNERS OF TWENTY (20) PERCENT OR MORE OF THE AREA:*

- (1) OF THE PROPERTY INCLUDED WITHIN THE PROPOSED CHANGE;  
OR,*
- (2) OF THOSE IMMEDIATELY ADJACENT TO THE REAR OR ANY SIDE OF THE PROPERTY, EXTENDING ONE HUNDRED (100) FEET FROM THE PROPERTY; OR,*
- (3) OF THOSE DIRECTLY OPPOSITE ACROSS THE STREET FROM THE PROPERTY, EXTENDING ONE HUNDRED (100) FEET FROM THE STREET FRONTAGE OF SUCH OPPOSITE PROPERTY,*

SHALL EXTEND TO THOSE PROPERTY OWNERS WITHIN 100 FEET OF THE SUBJECT PROPERTY, INCLUDING THOSE LOCATED DIAGONALLY ADJACENT TO THE CORNERS OF THE SUBJECT PROPERTY, AS ILLUSTRATED IN FIGURE 26-112.1.

- k. A PROTEST, ONCE FILED AND DETERMINED BY THE COMMUNITY DEVELOPMENT STAFF TO COMPLY WITH THE OWNER AND AREA REQUIREMENTS OF CHARTER 5.10, MAY BE RESCINDED ONLY IN A WRITTEN INSTRUMENT, SIGNED BY THE SAME PERSON(S) AS THE PROTEST, AND PRESENTED TO THE CITY CLERK PRIOR TO CLOSING OF THE PUBLIC HEARING..
- l. THE COMMUNITY DEVELOPMENT DEPARTMENT SHALL PROVIDE WRITTEN GUIDELINES TO THE PUBLIC ON PROCEDURES FOR PROTEST.

**FIGURE 26-112.1**



**FIGURE 26-112.1 – PROTEST AREA.** IMAGES A-F ILLUSTRATE THE PROPERTY AREA REQUIREMENTS OF CHARTER 5.10 AND SECTION 26-112.C.7: A) PROPERTY INCLUDED WITHIN THE PROPOSED CHANGE; B) PROPERTY WITHIN 100 FEET EXTENDING FROM THE REAR OF THE SUBJECT SITE; C AND D) PROPERTY WITHIN 100 FEET EXTENDING FROM ANY SIDE OF THE SUBJECT SITE; E) PROPERTY DIRECTLY OPPOSITE ACROSS THE STREET FROM THE PROPERTY EXTENDING 100 FEET FROM THE STREET FRONTAGE OPPOSITE THE SUBJECT SITE. IMAGE F ILLUSTRATES THE PROPERTY AREA REQUIREMENT AS APPLIED TO AN IRREGULAR SIDE LOT LINE.

**Section 2.** Section 26-106 of the Code of Laws is amended to revise footnote 2 to read:

Right of Protest applies: See section 5-10 of the Home Rule Charter AND CODE SECTION 26-112. C.7.

**Section 3.** Section 26-113. B.3 of the Code of Laws is amended to read:

3. *City council action.* Upon receipt of the planning commission's recommendation, the city council shall hold a public hearing on the proposal. The hearing conducted on second reading of the proposed rezoning ordinance shall satisfy this requirement. Notice of the hearing shall be the same as for the planning commission hearing; however, publication of the ordinance on first reading, together with any required map, shall meet the newspaper publication requirement. The city council, in addition to consideration of the planning commission record, shall hear additional evidence and testimony presented and either approve, approve with modifications, or reject the ordinance. The city council shall base its decision upon all evidence presented, with due consideration of the criteria for review set forth under subsection 26-112. D.

~~In the event of a protest against such change of zone, signed by the owners of twenty (20) percent or more of the area:~~

- ~~1. Of the property included within the proposed change; or~~
- ~~2. Of those immediately adjacent to the rear or any side of the property, extending one hundred (100) feet from the property; or~~
- ~~3. Of those directly opposite across the street from the property, extending one hundred (100) feet from the street frontage of such opposite property, such change shall not become effective except by the favorable vote of three-fourths (¾) of the entire city council. Where land within the area proposed for change, or adjacent or opposite land, as defined above, is owned by the City of Wheat Ridge, such property shall be excluded in computing the required twenty (20) percent, and owners of non-city land within the one hundred foot limit, as defined above, shall be considered adjacent or opposite despite such intervening city land. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning.~~

IN THE EVENT OF A LEGAL PROTEST AGAINST SUCH CHANGE OF ZONE, UNDER THE PROCEDURE SET FORTH IN SECTION 5-10 OF THE HOME RULE CHARTER, A ZONE CHANGE SHALL NOT BE APPROVED EXCEPT BY THE FAVORABLE VOTE OF THREE-FOURTHS (¾) OF THE ENTIRE CITY COUNCIL. THE WRITTEN PROTEST TO SUCH CHANGE SHALL BE SUBMITTED TO THE CITY COUNCIL NO LATER THAN THE HEARING ON THE PROPOSED REZONING ORDINANCE. THE PROCEDURE AT CODE 26-112. C.7 SHALL BE FOLLOWED.

**Section 4.** Section 26-303. A.7 of the Code of Laws is amended to read:

7. In the event of a legal protest against the rezoning component of the planned development approval, under the procedure set forth in section 5-10 of the home rule charter, a zone change shall not be approved except by the favorable vote of three-fourths (¾) of the entire city council. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning ordinance. THE PROCEDURE AT CODE 26-112. C.7 SHALL BE FOLLOWED.

**Section 5. Severability Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 6. Effective Date.** This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of 7 to 1 on this 26<sup>th</sup> day of August, 2019, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for September 23, 2019 at 7:00 p.m. (continued from September 9, 2019), in the Council Chambers, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of 8 to 0, this 23<sup>rd</sup> day of September 2019.

SIGNED by the Mayor on this 23<sup>rd</sup> day of September 2019.

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Bud Starker, Mayor

ATTEST:

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Janelle Shaver, City Clerk

Approved as to Form:

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Gerald E. Dahl, City Attorney

First Publication: August 29, 2019

Second Publication: September 12, 2019 and September 26, 2019

Wheat Ridge Transcript

Effective Date: October 11, 2019