

PLANNING DIVISION STAFF REPORT

May 23, 2022



PREPARED FOR THE PLAN COMMISSION

Proposal: Zoning Text Amendment

Legistar File ID #: [71082](#) Protest Petitions for Zoning Map Amendments

Prepared By: Planning and Zoning Staff

[71082](#) – This amendment removes the provision allowing for a protest petition to be filed associated with zoning map amendments. The Original amendment also increases the proportion of Common Council members necessary to ensure passage of any future zoning map amendment to a 2/3 majority, rather than a simple majority. An Alternate amendment retains the simple majority for rezonings. See the following table for the 13 protest petitions filed since the zoning code was rewritten and adopted in 2013.

Year	Address	Valid?	Common Name/Notes	Legistar	Council Result
2013	633 N Henry St	Yes	"Waterfront", student oriented 71-units	28414	Passed 2/13/13 on vote of 15-3 (2 excused)
2013	4902-4908 Hammersley Rd	Yes	Pacific Cycle	28711	Passed 3/9/13 unanimously
2014	149 E Wilson St	Yes	Market rate mixed use, 127 units	32265	Passed 3/18/14 on vote of 17-2 (1 excused)
2015	4103-4119 Portage Rd	Yes	Market rate 3-building complex	37648	Passed 6/16/15 w/amendments on vote of 16-3 (1 excused)
2016	7933 Tree Ln	Yes	Tree Lane Apartments (Permanent Supportive Housing)	40665	Passed 1/5/16 on vote of 20-0
2016	820 S Park St	Yes	"820" (supported by Affordable Housing Fund)	40663	Passed 1/29/16 on vote of 19-0 (1 excused)
2016	418 Division St	No	"Velo" (3-story market-rate apartment building)	43648	Passed 9/16/16 on vote of 11-7 (1 abstention, 1 excused)
2019	Monroe St	Yes	Eliminating Edgewood Campus Master Plan	56839	Passed 1/7/20 on vote of 15-5
2021	3614-3700 Milwaukee St, 102-122 W Corporate Dr	Yes	Milwaukee Street Proactive Rezonings	62174	Failed 2/2/21 on vote of 6-13 (1 excused)
2021	341 State St, 317-321 W Gorham St, 322 W Johnson St	No	"HUB 2" 10-story mixed-use	67120	Passed 12/7/21 on vote of 16-3 (1 excused)
2022	4000-4150 Packers Ave & 4201 N Sherman Ave	Yes	Raemisch property (rezoning for variety of residential and commercial uses)	69274	Placed on file 2/22/22 on vote of 14-6
2022	2165 Linden Ave	Yes	3-story, 31 unit building	70655	Passed 5/10/22 on vote of 15-4 (1 excused)
2022	702 Ruskin St	Yes	Rezoning from IL to CN	69538	Referred to 6/21/22

Currently, whenever a zoning map amendment (also commonly known as a “rezoning”) is under review, the Council must act on the request following a recommendation by the Plan Commission, and passage requires a simple majority vote. However, the protest petition provision in [MGO 28.182\(5\)\(c\)](#) allows for 20% of property owners or registered electors within 100 feet of the subject property to file a protest petition. If a petition is deemed valid, the Common Council needs a supermajority (3/4) favorable vote in order to pass a zoning map amendment. Since Madison’s zoning code was rewritten and adopted in 2013, thirteen protest petitions have been filed. Most petitions have been deemed “valid”, but none have ultimately impacted an outcome.

State law no longer requires municipalities to include protest petition provisions in local zoning code. 2017 WI Act 243, which went into effect January 1, 2019, removed the state statute language mandating municipalities include protest petitions in their local code. While Madison’s ordinance remains on the books, it may be lawfully removed at any time.

The protest petition provision provides a way for a small number of people in opposition to a particular rezoning to organize and make it more difficult for the rezoning to move forward. The threshold of needing only 20% of property owners or registered electors within close proximity to a certain site to sign such a petition is relatively low. Particularly in low-density areas, just a few individuals might be a sufficient number to force a supermajority vote on a rezoning, even if their opposition is not shared by most neighboring property owners and residents.

Additionally, the formality and complexity of the protest petition process favors those who have a lot of experience reviewing land use cases and have easy access to private legal counsel. Protest petitions were created many decades ago as a tool to provide property owners with a way to mobilize against certain changes in close proximity to their properties. While Madison’s use of this tool can include initiative by residents who do not own property, it remains most heavily utilized by property owners with the time and resources to formalize their concerns about rezonings near their place of residence, and is most often used to oppose the development of new housing options that would bring new residents to the area.

Finally, when a protest petition is submitted, assessing its validity requires careful review and sometimes a substantial amount of unanticipated staff time from the Planning Division, Clerk’s Office, and City Attorney’s Office. Protest petitions may be filed without any advance notice to staff and must be reviewed for validity within three business days of filing, interrupting other planned priority work. Alternatively, they may be filed just a day before a Common Council meeting at which a rezoning is scheduled to be considered, and this late filing necessitates a delayed consideration to the following Common Council meeting

Given that none of the protest petitions submitted over the past decade have ultimately impacted a Council decision, the unanticipated resources necessary to review petitions, and frustrations about the process from multiple perspectives, staff supports the removal of the protest petition provision from Madison’s zoning code.

The provision that would replace a simple majority vote with a 2/3 majority vote (14 of 20 Alders, or 2/3 of those present and voting) necessary to pass a rezoning is more complicated. The Common Council in recent years has reviewed an average of 35 rezonings annually. On one hand, data shows that with very few exceptions, the outcome of most rezonings recently requested would not have changed if a 2/3 majority vote would have been required. That said, *very few items* require 2/3 or 3/4 majority votes by the Common Council in order to pass. This provision would elevate the consideration of rezonings nearly to that of a budget

amendment, which requires a 3/4 vote. There are some concerns about how this higher vote threshold might impact future rezonings that are in the public interest and consistent with recommendations in the Comprehensive Plan. The Common Council should take into careful consideration the potential direct and indirect implications of this particular provision as they consider whether to implement it.

Staff supports the removal of the protest petition provision from Madison's zoning code, and recommends careful consideration by the Plan Commission and Common Council before implementing a 2/3 majority threshold for the approval of rezonings moving forward. Staff is supportive of the Alternate version of the ordinance, which retains the simple majority vote for future rezonings.