



To: David Marcello
From: Thalia Reisin Ziffer
Date: October 19, 2011
Re: Exemplary “Early Notice” Provisions

RESEARCH MEMORANDUM

INTRODUCTION

Many state and local governments have become increasingly supportive of public participation in planning and zoning processes.¹ The City of New Orleans is currently in the process of revising its Comprehensive Zoning Ordinance (“CZO”), and this is an opportune time to ensure that the new ordinance embraces community participation.

The inclusion of an “early notice” provision would invite more openness and accountability into the process. An effective “early notice” provision would require applicants to provide the public with information about the project prior to submission of a formal application. An “early notice” provision might also encourage applicants to host a public forum where community members are given an opportunity to express concerns about the proposed project.

Three cities have useful examples of “early notice” provisions: Honolulu, Hawaii; Portland, Oregon; and Durham, North Carolina. These ordinances promote community engagement in zoning processes by requiring applicants to share information about the project and meet with the community prior to submitting a formal application. The ordinances might serve as a model for the City of New Orleans.

THREE EXEMPLARY ORDINANCES

Honolulu, Hawaii (Honolulu, HI Ord. §21-2.40-1&2): Honolulu’s Land Use Ordinance has distinct notification requirements for minor and major permits. Prior to submitting an application for some types of minor permits, the applicant must provide notice and present the project to “the neighborhood board of the district where the project will be located, or, if no such

¹ Douglas A. Jorden, Michele A. Hentrich, *Public Participation is on the Rise: A Review of the Changes in the Notice and Hearing Requirement for the Adoption and Amendment of General Plans and Rezoning Nationwide and in Recent Arizona Land Use Legislation*, 43 NAT. RESOURCES J. 865, Summer 2003.

neighborhood board exists, an appropriate community association.” The applicant is excused from these requirements if the neighborhood board or community association does not provide a date for the meeting within 60 days of the written request; provides written notice that it has no objections to the project; or indicates that a presentation is unnecessary. For minor conditional use permits involving meeting facilities, day-care facilities, or schools, no pre-application notice is required.

In order to secure a major permit, the participant must hold a pre-application meeting with the issuing department, unless the issuing department determines that a pre-application meeting would be “unnecessary.” Following this pre-application meeting, the applicant must provide notice and present the project to “the neighborhood board of the district where the project will be located, or, if no such neighborhood board exists, an appropriate community association.” As in the case of minor permits, the applicant is excused from these obligations if the neighborhood board or community association does not provide a date for the meeting within 60 days of the written request, provides written notice that it has no objection to the project; or indicates that a presentation is unnecessary. In addition, major permit applicants must prepare a summary of the issues raised at the community meeting and a description of any actions taken to mitigate these concerns and must submit this summary along with the formal permit application.

Portland, Oregon (Portland, OR Ord. §33:700.025): The Portland, Oregon Planning and Zoning Ordinance requires that applicants contact neighborhood residents to discuss building permits or land use reviews if they are not allowed by right.² Applicants must mail notice to the neighborhood association where the project is located and request a meeting. Neighborhood associations must respond within 14 days of the request and hold a meeting within 45 days of contact in order to preserve their right to a pre-conference meeting. Following the meeting but before applying for a land use review or building permit, the applicant must send a letter to the neighborhood association explaining any changes to the proposal. A copy of this letter must also accompany the formal application.

Durham, North Carolina (Durham, NC Ord. §3.2.3.B. UDO): In Durham, applications for amendments to the comprehensive plan, certain zoning map changes, and “other applications as may be specified elsewhere in the City-Code Unified Development Ordinance” must hold neighborhood meetings after a pre-application conference but before submitting formal applications. Once a meeting date has been set, the applicant must provide written notice to all recorded landowners within 600 feet of the development site and to all neighborhood associations within 100 feet of the site. During the meeting, the applicant must provide an opportunity for each attendee to speak or voice concerns. Following the meeting, the applicant must submit a list of the names of attendees at the meeting, a summary of the issues raised at the meeting by attendees, an explanation of how the proposal addresses these issues raised at the meeting, and various other documents along with the formal application.

² Portland, OR Ord. §33:700.025.

CONCLUSION

These three ordinances demonstrate that early notice provisions vary, but several common procedures are found in most of them. In designing an appropriate provision for the City of New Orleans, we may want to strive for the following provisions:

1. All applicants should be required to provide notice to the neighborhood on the proposed zoning matter before an application can be filed.
2. The applicant should be required to hold a pre-application meeting with the neighborhood when sufficient interest exists.
3. The ordinance should include timelines to protect against undue delays in the application process.
4. The applicant should respond in writing to neighborhood concerns, and a report of these exchanges should be submitted with the application.

New Orleans' ordinance should describe how applicants are to provide notice to the neighborhood on the proposed zoning matter. The Honolulu and Portland ordinances require the applicant to notify neighborhood associations located within the district where the project will be located. The Honolulu ordinance further provides that if no neighborhood association exists, then the applicant must contact the “appropriate” community associations. The Durham ordinance requires the applicant to provide notification to the neighborhood associations as well as property owners within a specified distance from the project.

The applicant should be required to hold a pre-application meeting with the neighborhood, unless the neighborhood associations and residents do not object to the proposed project. Moreover, pre-application conferences are not necessarily required for all permit or land use reviews. The Portland ordinance simplifies the process for permits or land use requests permitted “by right.” The Durham ordinance mandates community participation for formal applications to amend the comprehensive plan, certain zoning map changes, and “other applications as may be specified elsewhere in the City-Code Unified Development Ordinance.”

It might also be advisable to *require that applicants hold a pre-conference meeting with the issuing department,* to ensure that broad parameters for the project have been met before subjecting the community to what could prove to be unnecessary frustration if the project application is fundamentally deficient in some way. Both Honolulu and Durham require applicants to hold such a meeting.

The ordinance should include timelines that protect against undue delays in the application process. The Honolulu ordinance mandates that a community meeting must take place within 60 days of the written request, or the community will lose its right to a public meeting. Similarly, the Portland ordinance requires a community meeting within 45 days of the initial contact with the neighborhood association.

It is also advisable to *require that applicants prepare a report accompanying the formal application*, delineating concerns raised at the neighborhood meetings as well as any actions taken to assuage or mitigate these concerns. Both the Honolulu and Durham ordinances require applicants to submit such a report. The Portland ordinance requires the applicant to send a letter directly to the neighborhood association, explaining any changes to the proposal, and further requires that a copy of the letter accompany the application when it is filed.

In summary, the “early notice” provisions of Honolulu, Hawaii; Portland, Oregon; and Durham, North Carolina provide useful models for the City of New Orleans’ CZO revision. The City of New Orleans could borrow from these provisions in crafting a similar “early notice” provision for the proposed new CZO.