

# 11-808 Protest Petitions

Text Amendment to Clarify Applicability  
City Council  
March 16, 2013



# Need for the Change

- An internal conflict within the Zoning Ordinance has led to litigation.
- Community needs clarification.



# What is the Protest Petition Provision?

Section 11-808 adds an extra layer of protection for land owners who are in closest proximity to the proposed zoning map amendment. A proper petition will trigger the need for a supermajority of the City Council to approve the zoning map amendment.



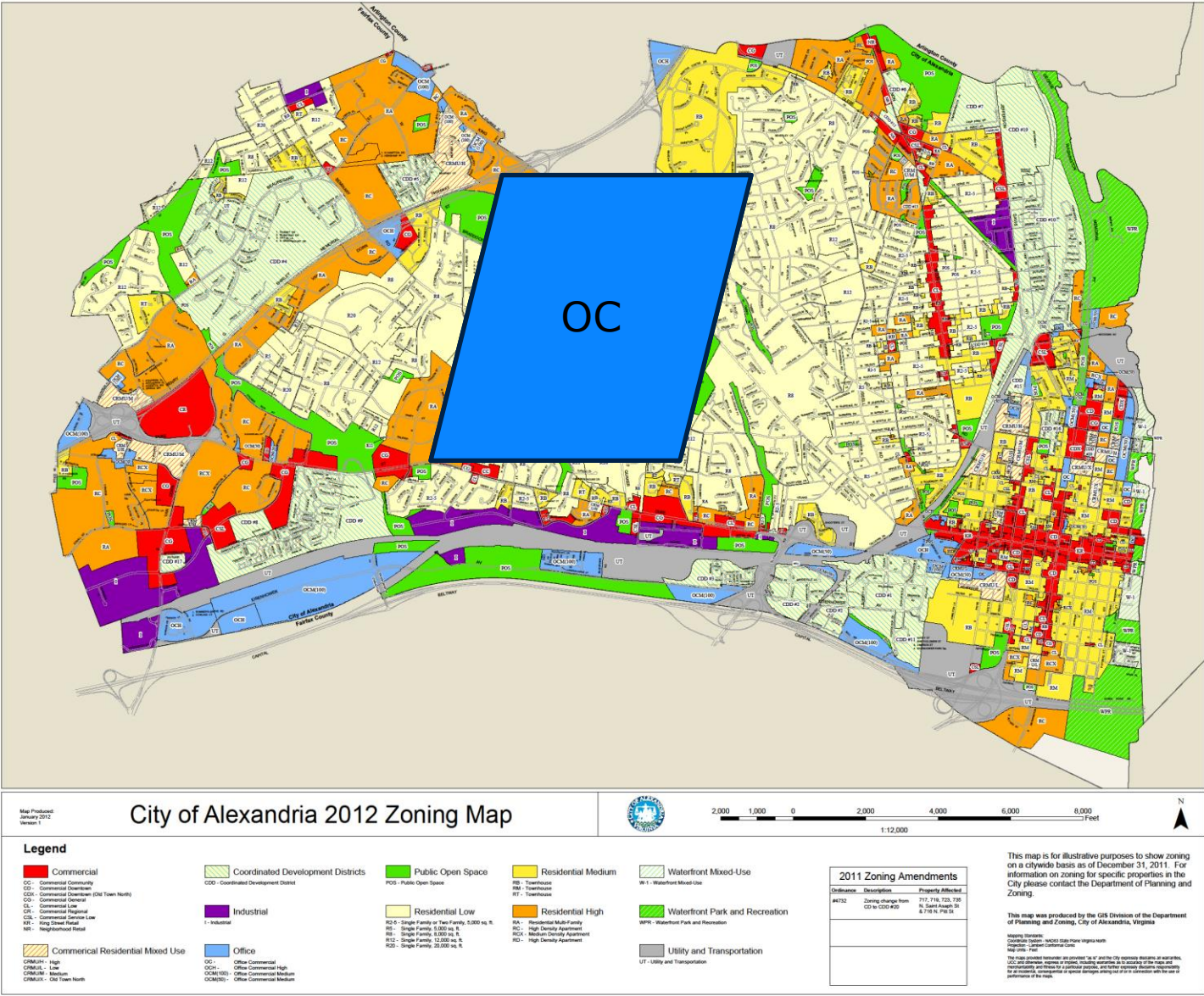
# Text Amendment & Map Amendment, what is the difference?

- A proposal to change the boundaries established by the official zoning map shall be referred to as a **map amendment**.
- A proposal to supplement, change, modify or repeal the provisions of the text of this ordinance shall be referred to as a **text amendment**.

Zoning Ordinance Section 11-801



# Example Map Amendment





# Example Text Amendments

TA #2010-0001  
Attachment #1 - Zoning Text Amendments

TA #2010-0001  
Attachment #1 - Zoning Text Amendments

**SMALL BUSINESS ZONING TEXT AMENDMENT**  
**ARTICLE I. GENERAL REGULATIONS**

1-400 Interpretation of ordinance.

(B) *Interpretation of zone regulations.*

(3) Maximum floor area ratio and maximum density shall be calculated as follows:

**STAFF CHANGE APPROVED BY PLANNING COMMISSION.**

(f) When calculating the floor area of an office, multifamily or mixed use building constructed after [effective date], space devoted to day care facilities and programs offering early childhood education, elder care and other related services shall not be calculated as floor area provided.

(1) a maximum of 10,000 square feet of floor area may be excluded under this provision;

(2) space for which this floor area exclusion has been allowed shall remain devoted to day care facilities and programs offering early childhood education, elder care and other related services unless a special use permit is approved for alternative community facilities or civic functions including public schools, community arts exhibition or performance space, private education center, neighborhood reading room or library, space for community meetings and functions; or a youth center.

**ARTICLE II: DEFINITIONS**

2-190 Restaurant. A public place where food and beverages are sold to customers in a form suitable for carryout or delivery or for immediate consumption with facilities for consuming such food and beverages available on the premises. This definition shall not be construed to include special events sponsored by an athletic, charitable, civic, educational, fraternal, political or religious organization in a park or other public place, churches, synagogues, fraternal lodges, school cafeterias and dining halls, food vending machines, mobile food units, pushcarts, ball park and sports arena refreshment stands or retail stores.

2-190.1 Restaurant, accessory. A use involving the sale or presentation of food and beverages which is clearly subordinate in area, extent, and purpose to an approved principal use and which is customarily found in connection with and serving that principal use. Typically, an accessory restaurant is not larger than 33% of the floor area of the entire business; does not offer table or delivery service; does not have hours of operation longer than the principal use; and does not have a separate entrance.

2-190.2 **STAFF CHANGE APPROVED BY PLANNING COMMISSION.** Restaurant, nightclub. A restaurant where entertainment, live or otherwise, predominates over food service, becoming the principal use for at least during part of the business' operations, with or without dancing, and typically involving a cover or other charge for admission and event advertising.

2-190.3 **STAFF CHANGE APPROVED BY PLANNING COMMISSION.** Restaurant, coffee or ice cream shop. A small restaurant, typically no more than two thousand square feet in area, where the principal business is either the sale of coffee and other hot beverages or the sale of ice cream, frozen yogurt or other related confections. Pastries, baked goods, cold beverages, sandwiches and other light fare may also be sold incidental to the service of coffee, and other confections, but no alcohol is served, no entertainment takes place and no significant cooking other than the application of heat by microwave, electric burner, espresso machine, the heating of soup or the boiling of water, typically takes place.

**ARTICLE IV: COMMERCIAL, OFFICE AND INDUSTRIAL ZONES**

**Sec. 4-100 CL/Commercial low zone.**

4-102.1 *Administrative special uses.* The following uses may be allowed in the CL zone with administrative approval, subject to section 11-513 of this ordinance:

- (A) Restaurant;
- (B) Massage establishment;
- ~~(B) (C)~~ Outdoor garden center;
- ~~(C) (D)~~ Outdoor food and crafts market;
- (E) Outdoor dining;
- ~~(D) (F)~~ Overnight pet boarding if located in a shopping center;
- (G) Valet parking.

4-103 *Special uses.* The following uses may be allowed in the CL zone pursuant to a special use permit:

- ~~(G-1) Massage establishment;~~

**Sec. 4-200 CC/Commercial community zone.**

4-202.1 *Administrative special uses.* The following uses may be allowed in the CC zone with administrative approval, subject to section 11-513 of this ordinance:

- (A) Restaurant;
- (B) Massage establishment;
- ~~(B) (C)~~ Outdoor garden center;
- ~~(C) (D)~~ Outdoor food and crafts market;
- (E) Outdoor dining;
- ~~(D) (F)~~ Overnight pet boarding if located in a shopping center;
- (G) Valet parking.

4-203 *Special uses.* The following uses may be allowed in the CC zone pursuant to a special use permit:

- ~~(K-1) Massage establishment;~~

**Sec. 4-300 CSL/Commercial service low zone.**

4-302.1 *Administrative special uses.* The following uses may be allowed in the CSL zone with administrative approval, subject to section 11-513 of this ordinance:

- (A) Restaurant;
- (B) Massage establishment;
- ~~(B) (C)~~ Outdoor garden center;



# Zoning Ordinance Section 11-808

11-808 - Protest of zoning **map amendment** by landowners.

(A) Who may protest. A protest shall be signed by the owners of at least 20 percent of:

- (1) The land proposed to be rezoned by the **map amendment**; or
- (2) All land within 300 feet of the boundaries of the land proposed to be changed by the **map amendment**.

(B) Deadline for protest. A protest must be filed with the city clerk no later than noon on the last working day before the day on which city council conducts its first public hearing on the proposed amendment.

(C) Calculation of ownership. The director shall verify that those filing are legal property owners. Through mathematical calculation and the use of a planimeter, the department of transportation and environmental services shall verify said 20 percent area. Streets, alleys and land dedicated to public use or owned by the city, state or federal government shall not be included in computing the areas of ownership required.

(D) Effect of protest. If a protest to a proposed ~~text or~~ **map amendment** is filed, the city council may not approve the proposed amendment except by an affirmative vote of three-fourths of its members.

(E) Limitations.

- 1) Once a protest has been filed, no changes by way of addition, substitution, amendment or withdrawal may be made to the protest after the deadline provided for the filing of a protest in section 11-808(B).
- 2) A protest against a less restrictive change is not effective against a more restrictive change but a new protest may be filed against the more restrictive change and this paragraph does not prevent the filing of a protest against both a less and more restrictive change.
- 3) The provisions of this section 11-808 shall not apply to city owned property or be effective in the case of a **map amendment** which is part of a comprehensive implementation of a new or substantially revised zoning ordinance.



# City Charter Section 9.13

Sec. 9.13 - Effect of protest by twenty per cent of the owners of property.

If a protest is filed with the city clerk against an **application of motion to amend the boundaries of a zone or to amend the terms of an adopted conditional zoning proffer or zoning condition**, signed by the owners of twenty percent or more either of the area of land within the boundaries of such proposed change or of the area of land within 300 feet of the boundaries of the land affected by such proposed change, the council shall not approve the application or motion, or adopt the ordinance making such amendment, by less than three-fourths affirmative votes of the members of council. Streets, alleys and lands dedicated to public use or lands owned by the city, Commonwealth, or federal government shall not be included in computing the abovementioned areas.

Any such protest shall be filed not later than 12 o'clock noon on the last working day before the day on which a public hearing on the application or motion is first conducted by the city council. Once any such protest has been filed no changes thereto by way of addition, substitution, amendment or withdrawal, may be made after said 12 o'clock noon deadline. (Acts 1960, ch. 8, § 1; Acts 1966, ch. 12, § 1; Acts 1966, ch. 83, § 1; Acts 1971, Ex. Sess., ch. 166, § 1; Acts 1974, ch. 595, § 1, Acts 1988, ch. 157; Acts 1990, ch. 652, § 1)





# History of Protest Petition Provision

- Protest petition provision has been included in the Zoning Ordinance since 1951.
- City Charter authorizing language was vague, similar to other jurisdictions.
- 1990 the General Assembly amended the City Charter to clarify that it applies only to map amendments.
- 1990 City Zoning Ordinance was amended to incorporate charter change.
- 1992 as part of comprehensive Zoning Ordinance change, the current version of 11-808 was adopted.



# Planning Commission Motion

1. address the issue of a text amendment that is only about one property, making it more like a map amendment;
2. Address map amendments and text amendments that are part of a comprehensive small area plan planning process;
3. update outdated language such as the use of the planimeter; and
4. clarify how condominium property should be considered in the calculation; and
5. Consider what charter changes may be necessary to implement these changes.

# Questions?

