



Planning & Community Development
Department

Public Memo

From: Brock Cherry, Director, Planning & Community Development

Date: December 6th, 2023

Re: Adjacent Property Owner Due Process Rights regarding the amendment of Zoning Districts (Rezones).

The purpose of this memo is to provide clear and transparent information regarding the rights of adjacent property owners when it comes to zoning amendments (rezones) that are located near or next to their owned property.

Montana State Code 73-2-305, which is reiterated by Great Falls City Code 17.16.40.040, states the following:

Montana State Code 73-2-305 - Alteration of zoning regulations -- protest.

1. A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of [76-2-303](#) relative to public hearings and official notice apply equally to all changes or amendments.
2. An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:
 - a. the area of the lots included in any proposed change; or
 - b. those lots or units, as defined in [70-23-102](#), 150 feet from a lot included in a proposed change.
3. (a) For purposes of subsection (2), each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in [70-23-102](#), spans more than one lot, the percentage of the unit owner's

undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.

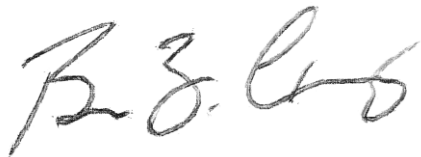
(b) The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to subsection (2) or by the presiding officer of the association of unit owners.

Great Falls City Code 17.16.40.040 - Vote if protested.

An amendment relating to the zoning provisions of this Title may not become effective except upon a favorable vote of two-thirds ($\frac{2}{3}$) of the present and voting members of the City Commission if a protest against the amendment is signed by the owners of twenty-five (25) percent or more of:

1. The area of the lots included in any proposed change; or
2. Those lots one hundred fifty (150) feet from a lot included in a proposed change. (See 76-2-305(2), MCA).

In short, these rules let property owners with land in the area of a proposed zoning change, or within 150 feet of a lot that may be impacted, submit a formal protest against the change. The protest must identify the owners' names and addresses who are closest to the proposed zoning change. If 25% or more of the owners of the lots affected by the proposed change or within 150 feet of it sign the protest, the governing body (in our case, the City Commission) must approve the rezoning request by a 2/3 majority vote instead of a simple majority. **Note that simply providing public comment, even in opposition to a zoning change, does not constitute a "protest," as provided by both Montana and Great Falls codes.**



Brock Cherry
Planning & Community Development Director
City of Great Falls