

Update to Section 11-808 Protest Petitions

Planning Commission Worksession
May 7, 2013



Topics of Discussion

- Updates:
 - Modernizing outdated language for current practice;
 - Applying the protest provisions to condominium ownership;
- Changes:
 - Expanding the protest provisions to apply to text amendments; and
 - Applying protests to map [and/or text] amendments implementing comprehensive planning changes.



Modernizing Outdated language

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 and that there are sufficient legal property owners signing to constitute the required 20% . 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 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.*



Addressing Ownership Structures

- Intent is to provide every property owner with the ability to be counted on the petition;
- The authority of a Condo Board or a HOA board to speak for their owners is limited;
- Necessary to find a fair and practical solution.



Purpose of the Protest Petition:

To provide property owners with the **highly extraordinary** ability to require a greater degree of consensus among lawmakers in order to change the zoning of a property.

As drafted it applies to properties in a **certain proximity** of a zoning change, where the group impacted is identifiable.

It is not available generally to all landowners, even to stop what some may consider an egregious or radical zoning change but rather it applies where the change proposed comes close to **resembling disfavored spot zoning** and as such should be difficult to make the change.



Historic protest petitions

Date	Type	Case #	Address	Project Name	Petition deemed valid?	Council Action
11/15/03	REZ	2002-0005	3517 Duke Street	Quaker Ridge	Unclear	Approved 6-1
4/17/04	REZ	2002-0004	11 North Quaker Lane	Quaker View	Yes	Denied 7-0
12/18/04	REZ	2004-0002	1323 Duke Street	Beasley Square	Yes	Approved 7-0
10/18/08	REZ	2007-0003	1199 South Washington Street	Hunting Terrace	Yes*	Denied 7-0
6/25/11	REZ	2011-0001	717 North St. Asaph Street	Harris Teeter	No	Approved 7-0
1/21/12	TXT	2011-0005	multiple	Waterfront W-1 Zone	No	Approved 5-2**

*The Planning Commission also recommended denial of this case, therefore, there would have been a super majority requirement even if there was not a valid protest petition.

**On March 16, 2013 City Council voted 6-1 on an identical text amendment and proceeded as if a super majority vote was required despite the invalid protest



Historic Text Amendments

In the last 20 years:

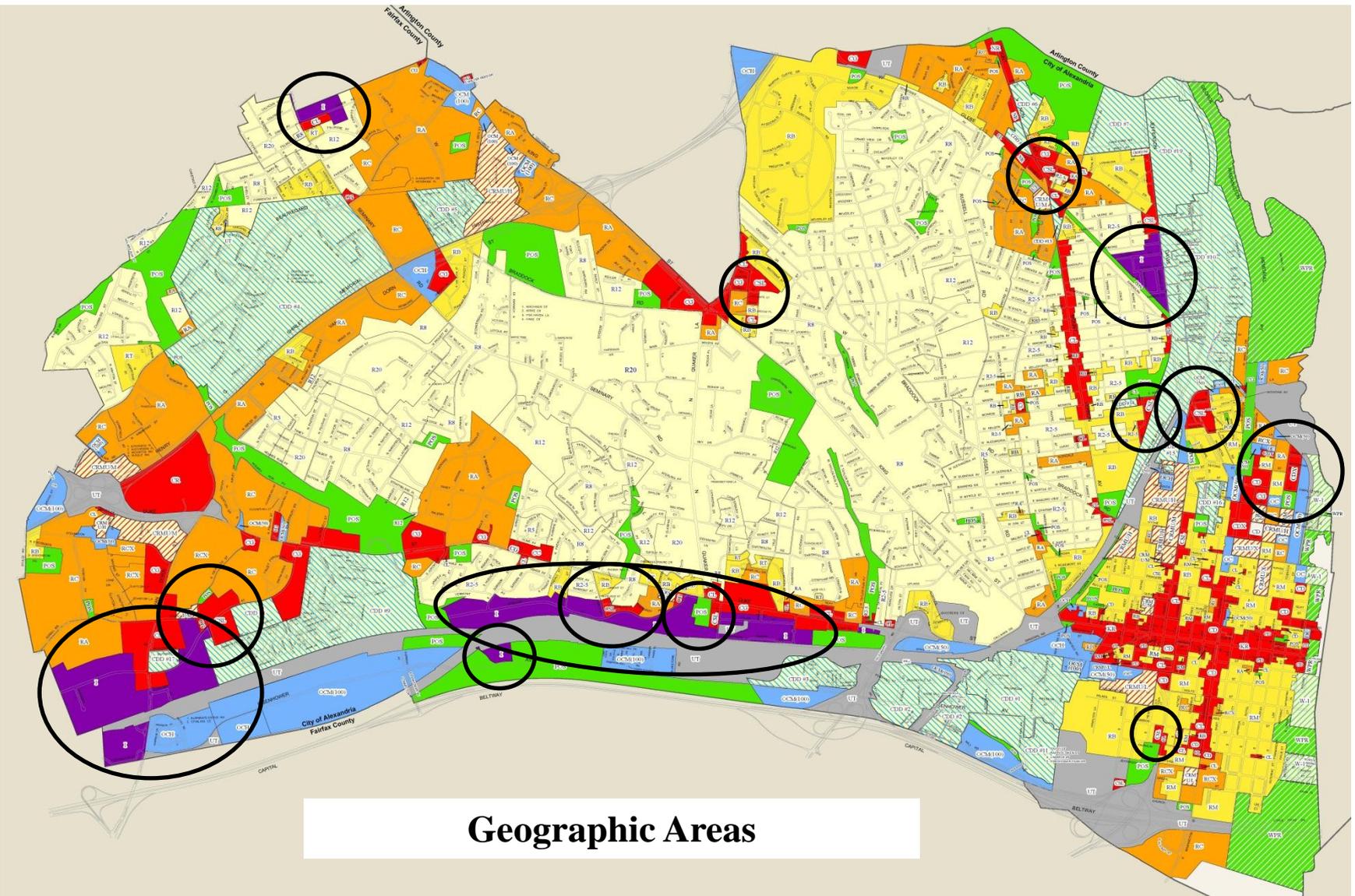
194 Text Amendments Total

130 are applicable City wide

40 pertain to a geographic area

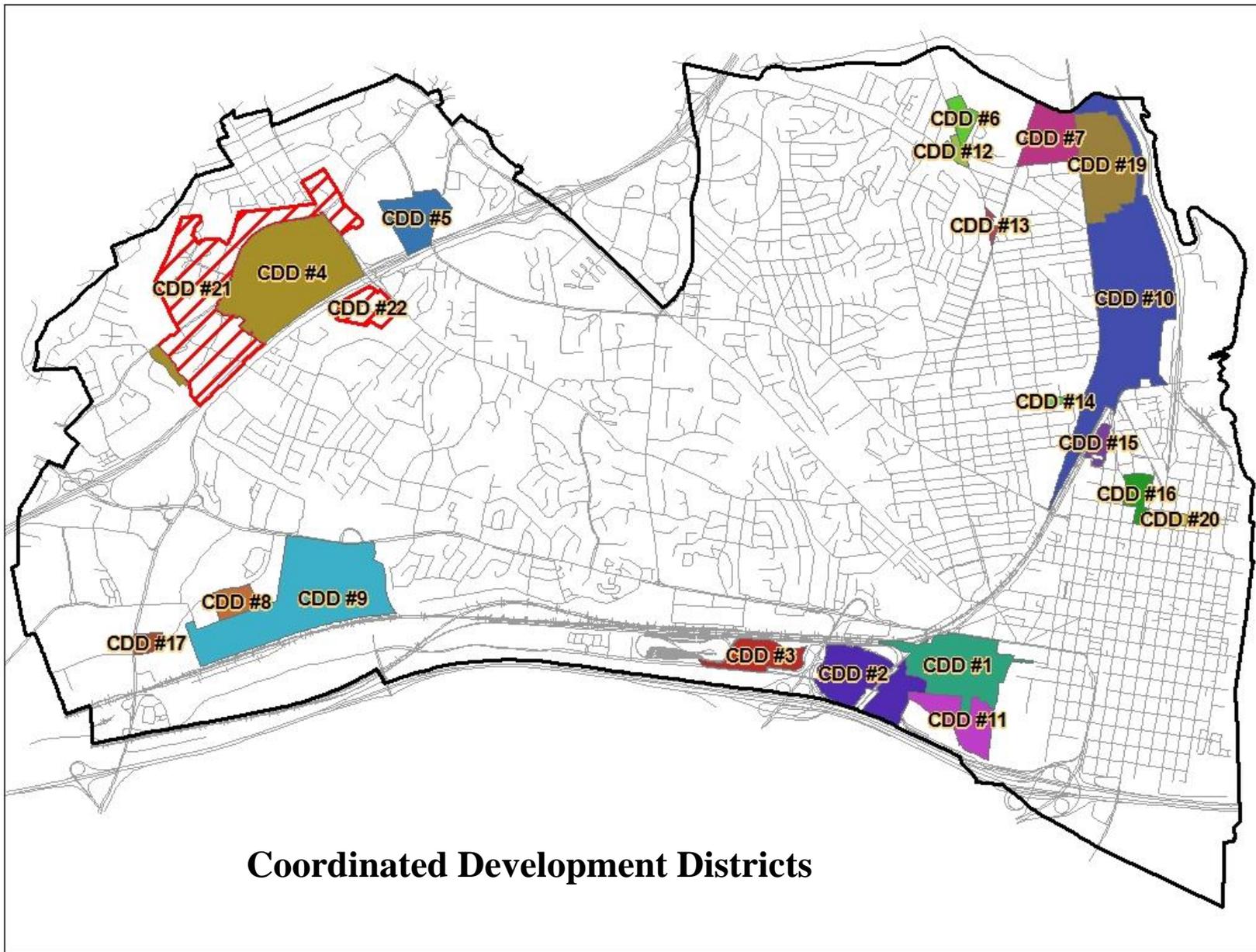
24 pertain to CDDs





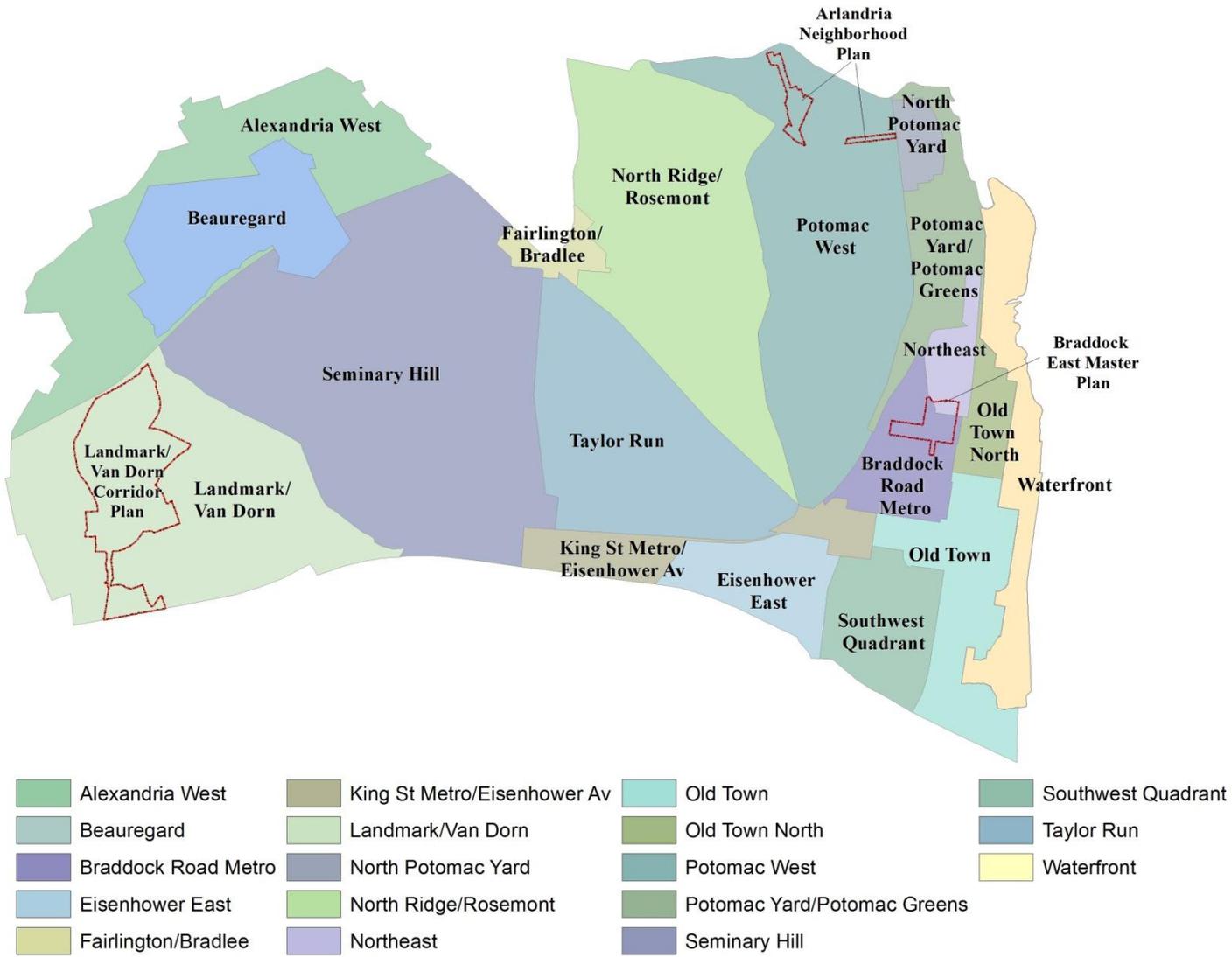
Geographic Areas





Coordinated Development Districts

Small Area Plan Studies



Procedural Protections

	input at PC hearing	input at CC hearing	input at third hearing (ordinance)	CC super-majority after PC denial	No CC consideration after PC denial	CC super-majority if Protest Petition	Zoning change must comply with Master Plan	Judicial Review of CC decision
Development Site Plan	●	on appeal						●
Development Special Use Permit	●	●						●
Map Amendment (Rezoning)	●	●	●	●		●	●	●
Text Amendment	●	●	●	●			●	●
Master Plan Amendment	●	●	●	If CC initiates	●		●	●



Potential solutions:

1. Add language to 11-808 to make it applicable to certain text amendments.
2. Add intent language to section 11-808 to make it clear what it is intended to apply to.
3. Establish a policy defining City Council's intent for when to use a text amendment and/or treatment of certain text amendments



Considerations

- Language must be clear and defined;
- Must not create a new ambiguity with potential for litigation;
- Some changes may require a change to the Charter.



Example, Defining a specific parcel

2-166 – Lot: A unit of land at all times above elevation +3.0 feet mean sea level, U.S. Coast and Geodetic Survey, usable as a building site, having frontage on a public street and in compliance with the requirements of the zone in which it is situated and recorded. Ground which through accretion or fill is raised to a level so that it is at all times above elevation +3.0 feet mean sea level, U.S. Coast and Geodetic Survey, shall be deemed land for purposes of this definition.

2-181.2 – Parcel: A unit of land of such size and dimensions that it may be divided into two or more lots in accordance with the requirements of the zone in which it is situated.

2-199 - Tract or tract of land: A unit or units of land, whether at, above or below elevation +3.0 feet mean sea level, U.S. Coast and Geodetic Survey, under single ownership or control which are to be used, developed or built upon pursuant to a common development plan. A tract of land need not necessarily coincide with a lot of record.



Potential New Language

(G) Notwithstanding any other provision of this section or any limitation herein, any zoning amendment that is submitted in the form of a text amendment that would change zoning as applied to only one a specific tract of land and that tract would be subject to protest under this section were the amendment in the form of a map amendment, shall be treated as a map amendment for purposes of this section, provided, however, that this subsection (G) shall not have application to any text amendment initiated by the City that:

(1) applies generally to all properties in a zone; (2) is for the purpose of implementing a small area plan; or, (3) amends Section 5-602(a) for an existing Coordinated Development District (CDD) that is larger than three (3) acres in size.



Questions?

