



Rezoning Protest Petitions

Charter Review Committee

May 6, 2024

CPD Presentation Outline

- What is a rezoning protest petition?
- Where did it come from?
- How has it changed?
- How often do we receive them?

What is it?

A rezoning protest petition allows some landowners to require a three-fourths supermajority vote for City Council to approve a zoning change.

Two Petition Types in Charter

1. 20% of the area of lots being rezoned (**rare**), or
2. 20% of the land located within Denver within 200 feet of the area being rezoned (**most common**)



What are the requirements?

- For either type of protest, petitions must be signed by landowners
- If a protest is valid, then 10 City Council members votes are needed to approve the rezoning (three-fourths majority)
- In Charter § 3.2.9

How does someone file a protest petition?

- The process to implement the Charter's protest rules is codified in the Denver Zoning Code
- Public guide available at www.denvergov.org/rezoning



What happens when a protest petition is submitted?

- CPD verifies signatures
- CPD calculates if the 20% threshold is met
- CPD submits a staff report to City Council to document whether the 10-vote threshold is required to approve the rezoning
 - Due in 3 days (the Thursday before the public hearing)

Where did the protest procedure come from?

- First adopted in the City Charter in May 1923
- When the city's zoning powers were first created
- Only two changes since then

Why did they create a protest procedure?

The Charter Amendment on Zoning

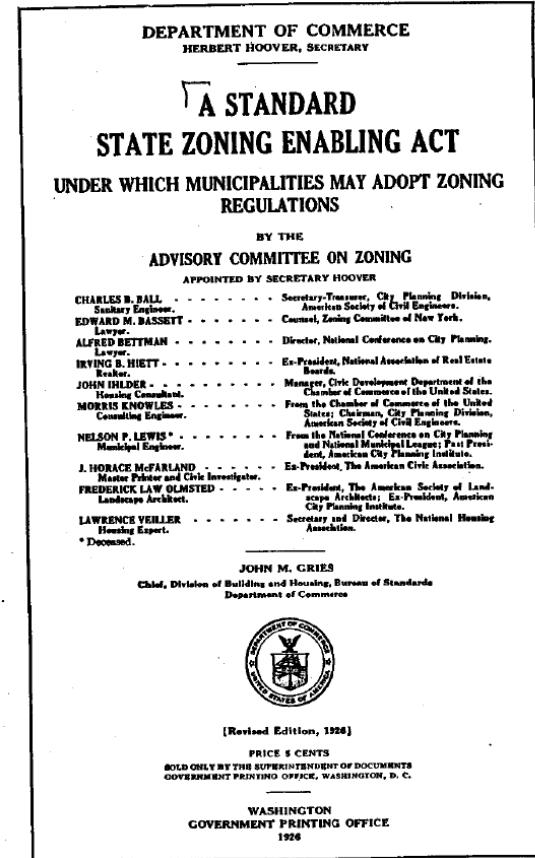
BY adopting the charter amendment to enable the City Council to pass zoning ordinances Denver took its place among the progressive cities of America in this respect, and the city will now progress in an orderly, systematic manner, instead of in a hit-and-miss style.

Section five protects owners from changes or amendments in regulations, restrictions or boundaries, by providing for a protest of 20 per cent of area of lots included in change or directly opposite, and a three-fourths vote of the Council is necessary to override this protest. Changes or amendments require public hearings.

Municipal Facts, Vol. 6 No. 5, May 1923

Where did it come from?

- Copied from the Standard State Zoning Enabling Act drafts published in 1922
- Federal government effort to provide model zoning legislation that states and cities could adopt
- Process-oriented, not substance-oriented
- Intended to survive judicial scrutiny as explicitly race-based zoning ordinances were being overturned by courts



Why did they include a protest procedure?

The Advisory Committee on Zoning wrote:

“There must be stability for zoning ordinances if they are to be of value. For this reason the practice has been rather generally adopted of permitting ordinary routine changes to be adopted by a majority vote of the local legislative body but requiring a three-fourths vote in the event of a protest from a substantial proportion of property owners whose interests are affected. This has proved to be a sound procedure and has tended to stabilize the ordinance.”

What distance did they recommend?

The Advisory Committee on Zoning wrote:

“There should be inserted into the act the number of feet which is the prevailing lot depth in the municipalities of the State.”

How has the protest petition changed?

- 2 substantive amendments to the Charter since 1923
- Both changed how to measure adjoining properties
- There have been no changes to:
 - The minimum percentage (20%),
 - Who can sign (land owners), or
 - The number of council votes required (10)

1968 Charter Amendment

Changed how to measure the surrounding area

Previous area:

“of those [lots] immediately adjacent in the rear thereof, extending one hundred feet therefrom, or of those [lots] directly opposite thereto, extending one hundred feet from the street frontage of such opposite lots”

Changed to:

“the area to a distance of two hundred feet from the perimeter of the area proposed for change”

2023 Charter Amendment

Removed land outside Denver from the calculation

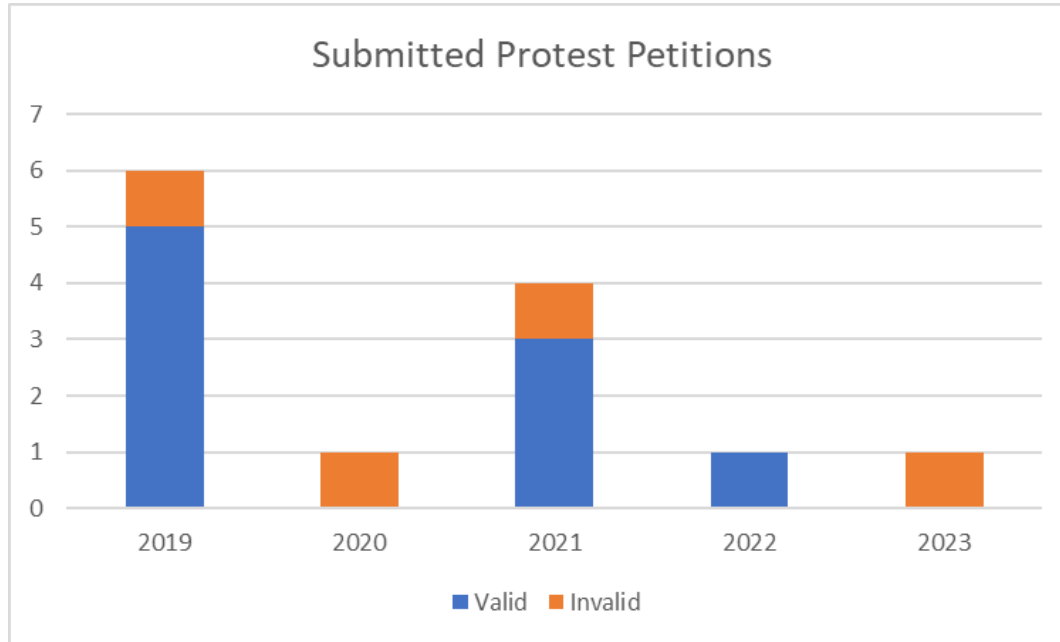
Previous:

“The area to a distance of two hundred feet from the perimeter of the area proposed for change”

Changed to:

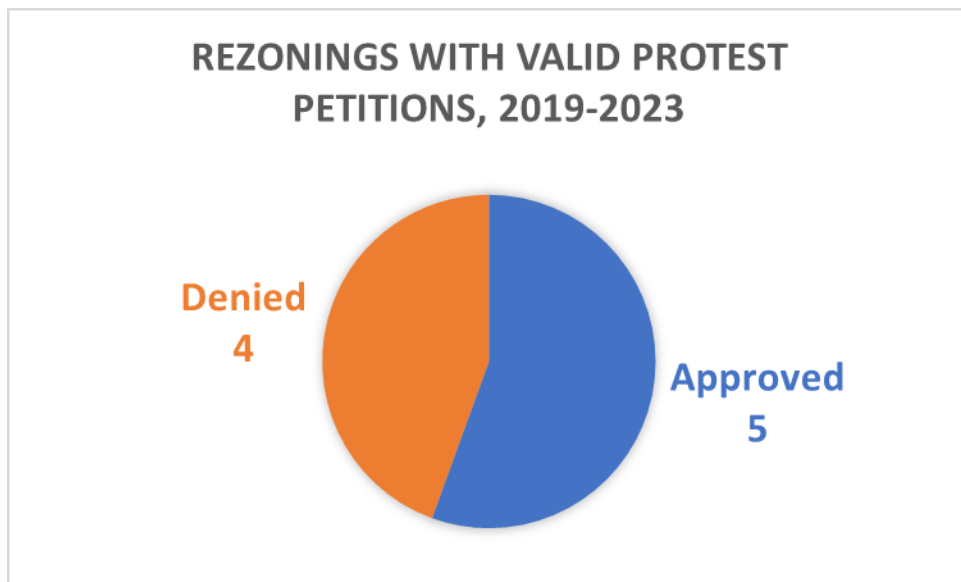
“The area located within the City and County of Denver two hundred feet from the perimeter of the area proposed for change”

How often are protest petitions submitted?



From 2019 to 2023, protest petitions applied to only 3% of all rezoning decisions

How has City Council voted when there were valid protest petitions?



- Of the 4 denials, only 1 case had a majority voting to approve but did not reach the 10-vote supermajority
- In all other denials, a majority voted to deny



Rezoning Protest Petitions

Charter Review Considerations

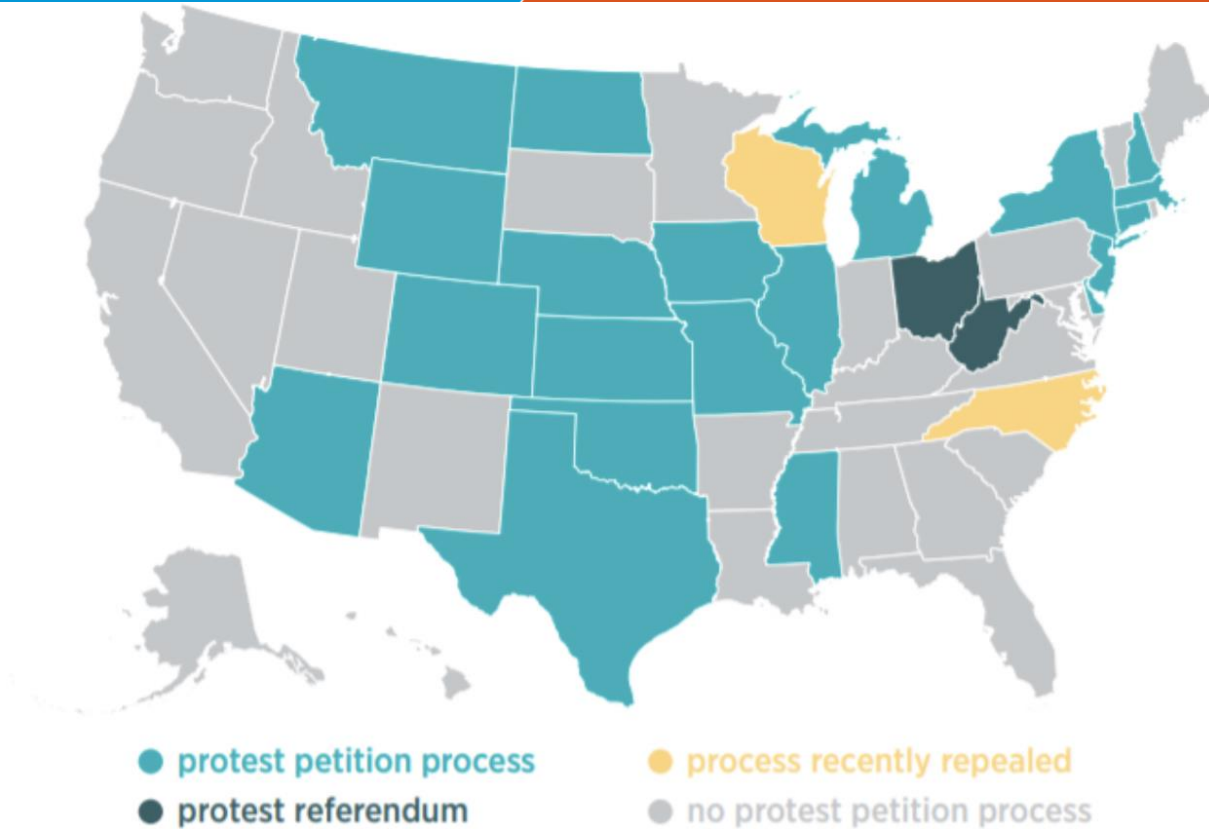
May 6th 2024

What is the Objective?

This is not an official proposal, this is a conversation to determine what Council's thoughts are on equity within Rezoning Protest Petitions (RPP).

Advancing Equity in Rezoning Project addresses text amendment changes to the Denver Zoning Code. RPP lives in charter which would require voters to adopt a change to the charter.

Current RPP Status by State



Referendums in Ohio and West Virginia feature local opinion with a vote but are administratively expensive.

Source: George Mason University, [Rezoning Protest Petitions Are Ripe for Reform](#), 2022

Table 1. Protest Petition Rules by State

If neighbors bring a valid protest petition, a proposed rezoning requires a supermajority vote of the city council to take effect. This table shows the rules that apply in each state. Rules for county rezonings often differ.

Arizona	Owners of	20%	of land within	150'	trigger a	3/4	majority requirement.
Colorado	Owners of	20%	of land within	100'	trigger a	2/3	majority requirement.
Connecticut	Owners of	20%	of land within	500'	trigger a	2/3	majority requirement.
Delaware	Owners of	20%	of land within	100'	trigger a	3/4	majority requirement.
Illinois	Owners of	20%	of abutting lots		trigger a	3/4	majority requirement.
Iowa	Owners of	20%	of land within	200'	trigger a	3/4	majority requirement.
Kansas	Owners of	20%	of land within	200'	trigger a	3/4	majority requirement.
Massachusetts	Owners of	50%	of land within	300'	trigger a	2/3	majority requirement.
Michigan	Owners of	20%	of land within	100'	trigger a	2/3 to 3/4	majority requirement.
Mississippi	Owners of	20%	of land within	160'	trigger a	3/5	majority requirement.
Missouri	Owners of	30%	of land within	185'	trigger a	2/3	majority requirement.
Montana	Owners of	25%	of land within	150'	trigger a	2/3	majority requirement.
Nebraska	Owners of	20%	of land within	300'	trigger a	3/4	majority requirement.
New Hampshire	Owners of	20%	of land within	100'	trigger a	2/3	majority requirement.
New Jersey	Owners of	20%	of land within	200'	trigger a	2/3	majority requirement.
New York	Owners of	20%	of land within	100'	trigger a	3/4	majority requirement.
North Dakota	Owners of	20%	of land within	150'	trigger a	3/4	majority requirement.
Oklahoma	Owners of	50%	of land within	300'	trigger a	3/5 or 3/4	majority requirement.
Texas	Owners of	20%	of land within	200'	trigger a	3/4	majority requirement.
Wyoming	Owners of	20%	of land within	140'	trigger a	3/4	majority requirement.

Source: George Mason University, [Rezoning Protest Petitions Are Ripe for Reform](#), 2022

Protest Petition Rules by State

20 States currently have a RPP process, most have a majority requirement at 2/3 vote or more.

How Can we Make Access to Rezoning Protest Petitions More Equitable?

- Notifications
- Expand to renters
- Expand 200ft radius
- Assess the Super-Duper majority vote of council
- Consider changing the threshold of 20% of property owners signatures to move forward the petition

Notifications:

- Notifications are addressed in code, not charter
 - (a) the city has been expanding - not reducing - notifications, and
 - (b) as technology changes, code changes will be more flexible than charter, such as allowing people to sign up online or by email rather than by U.S.P.S.
- Notifications are being addressed by the Advancing Equity in Rezoning project.

Expand to Renters:

- Currently renters cannot participate, this includes renters of business properties
- Currently LLCs, companies, or trusts that “own” properties can participate as signatories in RPPs
- Anyone can request a petition packet, including renters, but renters cannot sign
- Determining residency would be difficult, using voter registration as a verification method still has exclusionary factors

Expand 200ft Radius:

- Doubling or tripling the number of notified property owners- might make it more difficult for the petitioner
- Engaging with property owners who live further away from the proposed rezoning could be more difficult as they may not be as impacted by the rezoned property
- Additional staff time and cost
- Could allow for a larger pool of signatories to require a supermajority vote, especially if the proposed rezoned property is near to a public building or park that would naturally eliminate a large portion of the eligible signatories

Assess the Super-Duper Majority:

- 10-member majority favorable vote is required for the protest to succeed
- No where else in charter is there a requirement for a 10-member majority vote
- RPP super-duper majorities stem from century-old provisions that were summarily adopted by numerous municipalities across the United States and designed to be inequitable

Assess the 20% Threshold of Signatories:

- Only 20% of property owner's signatures within the 200ft radius are required to validate the protest and refer to council, consider increasing the percentage
- The opinion of the minority has opportunity to prevail without much scrutiny
- Offers residents the ability to participate through one of the few measures that offers substantive enfranchisement to residents
 - Limited to property owners, which may or may not be actual residents of Denver
 - 2023 Charter amendment excludes residents outside the City and County of Denver in neighboring municipalities/ unincorporated areas from participating, but this does not exclude the property owners who do not reside in Denver

Do away with Rezoning Protest Petitions All Together?

- Research has found no cities that have expanded RPP to renters
- Of the cities and states that have chosen to update or revise their RPP some have chosen to eliminate the RPP process
- Small number of protest petitions each year that meet the requirements that result in a 10-vote majority by council



Discussion & Questions