



ST. CHARLES  
SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title: Discussion regarding notification for public hearings

Presenter: Rita Tungare, Director of Community Development

*Please check appropriate box:*

	Government Operations		Government Services
X	Planning & Development – 9/12/11		City Council

Estimated Cost:		Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

**Executive Summary:**

This item has been added for discussion at the request of Alderman Ray Rogina. Recently, there has been a question about the geographical distance within which mailed notice must be given in connection with public hearings held before the Plan Commission.

Attached is a memo from legal counsel summarizing the State law and St. Charles requirements. Staff has also prepared a spreadsheet with data from a few other communities to help facilitate the discussion.

Any change to the current requirements will require an amendment to Title 17 of the City Code, which is the Zoning Ordinance

**Attachments:** *(please list)*

Memorandum from Robin Jones, Data from other communities

**Recommendation / Suggested Action** *(briefly explain):*

Provide direction to staff as to whether the Committee believes a change is desired.

*For office use only:*

*Agenda Item Number:*

## Memorandum

**To: Rita Tungare**  
**From: Robin Jones**  
**Date: September 9, 2011**  
**Re: Geographical distance requirements for mailed notices given in connection with development applications**

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You have requested that I provide you with the current legal requirements regarding the geographical distance within which mailed notice must be given in connection with development applications in the City. You have also asked if the City has the authority to increase that distance. Please note that this memo does not address other notice requirements (*i.e.*, publishing and posting requirements) or whether the City could decrease the distance requirement.

### **I. Current legal requirements.**

**A. St. Charles Zoning Ordinance.** Pursuant to Section 17.04.160B. of the City's Municipal Code, for any application requesting a zoning map amendment, zoning variation and/or special use/amendment to special use, notice of the public hearing must be mailed (via first class certified mail) to the owners of all property within 250 feet of the subject property. The 250 feet is measured in all directions from the perimeter of the subject property. In calculating the 250 foot distance, public roads, streets, alleys, other public ways and railroad rights of way are excluded.

**B. Illinois Municipal Code.** Article 11, Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, *et seq.*) provides for, among other things zoning map amendments, zoning variations and special uses. Pursuant to 65 ILCS 5/11-13-1.1 and 11-13-7, written notice of a public hearing for a special use application must be served on the owners of all property within 250 feet in each direction of the subject property. In calculating the 250 foot distance, public roads, streets, alleys and other public ways shall be excluded. The written notice may be served either in person or by registered mail, return receipt requested. As you can see, the City's Zoning Ordinance distance requirement essentially mirrors the state statute distance requirement.

The Illinois Municipal Code does not specifically require mailed notice for zoning map amendments or zoning variations (except for variations in municipalities with a population of 500,000 or more). However, it is common in many municipalities for the local zoning ordinance to impose a mailed notice requirement in these situations.

### **II. Does the City have the legal authority to increase the distance requirement?**

As a home rule unit, the City can exercise any power and perform any function pertaining to its government and affairs, pursuant to the authority granted by Article VII, Section 6(a) of the Illinois Constitution. There are certain limitations on and preemptions of home rule power, but most zoning matters fall within the City's home rule powers, including increasing the distance requirement on the mailed notice provision. As mentioned above, like many other communities

(both home rule and non-home rule), the City already imposes more stringent notice requirements than state law does by requiring mailed notice for map amendments and variations.

Therefore, the City does have the legal authority to increase the mailed notice requirements. There are, of course, practical implications and policy issues that the City will want to take in to account in considering this issue—this memo does not address those matters.

Should you have any additional questions, please feel free to contact me.

## Survey of Public Hearing Notice Requirements

Nearby Municipalities	Home Rule	Notice Distance (excluding right of way, unless noted)		Additional Requirements
		Special Uses	Zoning Map Amendments	
Geneva	No	250	250	
North Aurora	No	250	250	
South Elgin	No	250	250	
Aurora	Yes	250	250	
Bartlett	Yes	250	250	
Batavia	Yes	500 (including ROW)	500 (including ROW)	"All property owners of record within 500 feet of the property, unless the Comprehensive Plan or other policy adopted by the City Council requires notification within a larger area. The Director may require the applicant to send notice to property owners beyond the notification area set forth in Section 5.205.D.1.a if he determines the potential impact of the project extends beyond the required notification boundary."
Carol Stream	Yes	250	None	
DeKalb	Yes	250	250	"In all instances, the furnished list shall include the names and addresses of a minimum of ten (10) property owners. Should the two-hundred fifty (250) foot notification area not result in a list of ten (10) property owners then the notification shall be appropriately expanded until this minimum has been met. In expanding the notification area, preference shall be given towards those properties comprised of urban-sized lots or in areas most likely to be affected by the proposal."
Elgin	Yes	300 (including ROW)	300 (including ROW)	
Naperville	Yes	250	250	
West Chicago	Yes	250	250	
Wheaton	Yes	250	250	
Schaumburg	Yes	150	150	

Kane County	NA	Adjacent property (directly adjacent or across right-of-way)
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