



## CITY OF BEND

### **P L A N N I N G   C O M M I S S I O N   M E M O**

**Meeting Date:** October 26, 2020

**File Number:** 20-0777

**Staff Members:** Pauline Hardie, AICP, Senior Code Planner

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**SUBJECT:** Bend Development Code (BDC) amendments to Chapter 4.1, Development Review and Procedures that relate to the current public meeting, notification and public comment processes for Type II and III development applications.

**LOCATION:** The proposed changes to the BDC are legislative text amendments and apply citywide.

**BACKGROUND:** The City Council has a goal that states “The City is an efficient, well-run organization that has the appropriate people, systems and processes to meet changing customer needs.” To implement this goal, the Council has a strategy to increase community participation. The Neighborhood Leadership Alliance (NLA) has been working with staff on proposed amendments to the Bend Development Code (BDC) that could help increase community participation. The proposed amendments relate to public meetings and notification and public comment processes for Type II and III development applications.

The City Council reviewed the amendments during a work session on September 16, 2020, and directed staff to start processing the amendments to the BDC. On September 24, 2020, staff emailed a memo outlining the proposed amendments to the Bend Development Code Update Group and requested feedback. On October 7, 2020, the NLA Land Use Working Group held a meeting to discuss the recommended code changes with representatives of the development community. On October 15, 2020, staff emailed the draft to the Bend Development Code Update Group and to the NLA for their review.

**DISCUSSION:** The following outlines the recommendations from the NLA:

**Recommendation (BDC 4.1.215.B)**

- Extend deadline for notification of a Neighborhood Public Meeting from a 15 day minimum to 21 days
- State Law: No requirement to hold a Neighborhood Public Meeting

**Recommendation (BDC 4.1.420.A and B)**

- Extend deadline for TYPE II public comment period from 14 days to 16 days
- State Law (ORS 197.195): Provide a 14-day period for submission of written comments prior to the decision

**Recommendation (BDC 4.1.423.A.2.a)**

- Increase the notification areas for TYPE III development applications from 250 feet from the subject property to 500 feet
- State Law (ORS 197.763): Within 100 feet of the property

**Recommendations (BDC 4.1.425.A)**

- Require the posted Type II and III application signs to be five-feet from the abutting public way
- Require the posted Type II and III application signs to be posted for the duration of the public comment period instead of 10 contiguous days prior to the date set for comments
- State Law: No requirement to hold a Neighborhood Public Meeting

## Draft Bend Development Code Update

Draft: October 15, 2020

Prepared by:

Planning Division

### Note:

Text in underlined typeface is proposed to be added

Text in ~~striketrough~~ typeface is proposed to be deleted.

\*\*\*Indicates where text from the existing code has been omitted because it will remain unchanged.

Staff comments are ***bold and italicized***

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## Chapter 4.1 DEVELOPMENT REVIEW AND PROCEDURES

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### 4.1.215 Public Meeting.

- A. The applicant for a Bend Comprehensive Plan Map amendment, Zoning Map amendment, conditional use permit, master plan, subdivision or site plan review for new development or an alteration/addition to one or more buildings containing a total of 10,000 square feet or more must present the proposal at a public meeting prior to submitting the respective application to the City Planning Division. The presentation must be made at either a regular or special meeting with a neighborhood association recognized by the City of Bend whose boundaries the subject property lies within, or a public meeting arranged and conducted by the applicant. The presentation at the public meeting must include the following:
1. A map depicting the location of the subject property proposed for development.
  2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
  3. A description of the nature of the use including, but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
  4. The expected or anticipated impacts from the development.
  5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
  6. An opportunity for the public to provide comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

B. Public Meeting Notification. If any part of a proposed new development as referenced in subsection (A) of this section is to be constructed within the boundaries of a recognized neighborhood association of the City of Bend, the applicant ~~shall~~ must notify the designated representative of such association of the presentation. It ~~shall be~~ is the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected neighborhood of the date, time and location of the meeting/presentation. It ~~shall be~~ is the applicant's responsibility to provide the information listed in subsections (B)(1)(a) through (c) of this section to the designated representative of the neighborhood association. Such meeting ~~shall~~ must be held no less than ~~45~~ 21 days and no more than 45 days from the date that the applicant notifies the designated representative of the affected neighborhood association. The following provisions ~~shall be~~ are applicable to the applicant's obligation to notify the residents of the area affected by the new development application, whether the proposed development is within the boundaries of a recognized neighborhood association or not:

1. The applicant ~~shall~~ must send mailed notice of the public meeting to all property owners within 500 feet of the boundaries of the subject property, and, if any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Bend or within 500 feet of any other neighborhood association recognized by the City of Bend, notice ~~shall~~ must be sent by Priority Mail with Delivery Confirmation to the designated representative(s) of such neighborhood association(s). The property owner list ~~shall~~ must be compiled from the Deschutes County Tax Assessor's property owner list from the most recent property tax assessment roll. The address for the designated representative(s) of the affected neighborhood association(s) ~~shall~~ must be obtained from the City of Bend. The notice ~~shall~~ must be sent a minimum of ~~45~~ 21 days prior to the public meeting, and ~~shall~~ must include at a minimum:
  - a. Date, time and location of the public meeting.
  - b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernible.
  - c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessor's map) which depicts the subject property.

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#### **4.1.420 Mailed Notice of Type II Applications.**

A. Notice of Type II applications ~~shall~~ must be mailed at least ~~44~~16 days prior to the issuance of a decision to persons entitled to notice under BDC 4.1.423. Such notice ~~shall~~ must include all the information specified under BDC 4.1.424 except for the information specified in BDC 4.1.424(A)(7) and (10). Written notice ~~shall~~ must be sent by mail to the following persons:

1. The applicant.
2. Owners of record of property as shown on the most recent property tax assessment roll of property located:
  - a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary ~~shall~~ will increase by 250 feet for every 25-foot increment of structure height above 50 feet.
  - b. The applicant ~~shall~~ must bear the cost (i.e., mailing, etc.) of any notice.
3. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection (A)(2) of this section is within the boundaries of a recognized neighborhood association.
4. The notice requirements of this section ~~shall~~ will be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.
5. The Development Services Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection (A)(2)(a) of this section, at his or her sole discretion.

B. Any person may comment in writing on a Type II application within ~~44~~16 days from the date notice was mailed or a longer period as specified in the notice.

C. Notice of the Development Services Director's Type II decision and the appeal period ~~shall~~must be mailed to all parties to the record.

D. Any party can appeal a Type II decision in accordance with BDC 4.1.1100, Appeals.

#### **4.1.423 Mailed Notice of Type III Applications.**

A. Except as otherwise provided for herein, notice of a Type III application ~~shall~~ must be mailed at least 20 days prior to the evidentiary hearing for those matters set for one evidentiary hearing, or 10 days prior to

the first evidentiary hearing where two or more evidentiary hearings are held. Written notice ~~shall~~ must be sent by mail to the following persons:

1. The applicant.
  2. Owners of record of property as shown on the most recent property tax assessment roll of property located:
    - a. Within ~~250~~ 500 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary ~~shall~~ must increase by 250 feet for every 25-foot increment of structure height above 50 feet.
    - b. The applicant ~~shall~~ must bear the cost (i.e., mailing, etc.) of any notice.
  3. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.
  4. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection (A)(2) of this section is within the boundaries of a recognized neighborhood association.
- B. The notice requirements of this section ~~shall~~ will be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.
- C. The Development Services Director may increase the minimum notice area ~~up to 400 feet~~ beyond what is otherwise required under subsection (A)(2)(a) of this section, at his or her sole discretion.

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#### **4.1.425 Posted Notice of a Type II or Type III Applications.**

- A. Notice of a Type II or III application for which prior notice procedures are required ~~shall~~ must be posted on the subject property by the applicant/property owner ~~for at least 10 continuous days prior to any date set for receipt of comments~~ throughout the duration of the required public comment period. Such notice ~~shall~~ must, where practicable, be ~~visible from~~ located within five feet of any adjacent abutting public way. Failure of applicant/property owner to maintain posting of the sign ~~for 10 continuous days~~ shall throughout the duration of the required public comment period does not invalidate a land use approval.

B. Posted notice of an application for a utility facility line approval ~~shall~~ must be by posting the proposed route at intervals of not less than 500 feet. The notice ~~shall~~ must be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

**From:** [Steven Hultberg](#)  
**To:** [Pauline Hardie](#)  
**Cc:** [Jon Skidmore](#); [Sally Russell](#); [Mary Winters](#)  
**Subject:** RE: Bend Development Code Amendments  
**Date:** Friday, September 25, 2020 9:28:23 AM  
**Attachments:** [image007.png](#)  
[image008.png](#)

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Hi Pauline,

Thank you for sending the city's proposed changes to the public notice, comment period, notice distance and land use posting requirements. Please accept my comments, which are sent on my own behalf, and not on behalf of any of my clients.

The first question that I would ask is "What problems are we trying to address?" Having worked in the land use field in Bend for almost 15 years, it is hard to believe that there is a deficit of public involvement in the land use process. Similarly, I work in jurisdictions throughout the state which adhere to the statutory requirements and there is no lack of citizen involvement in those jurisdictions either. Bend has 13 neighborhood associations, as well as the Neighborhood Leadership Alliance. These groups have the ability to notify and engage their members if there are issues of concern. We should not be further extending the development review and notification process. Overall, I believe that the new standards are not necessary, overly burdensome and, in some cases, entirely unworkable.

Public Notice to 21 Days: There is no requirement for a public meeting under state law. The development review process is already lengthy, and adding an additional week to the process is simply unnecessary. The proposed 21-day period exceeds the notice provision for evidentiary land use decisions and is a full week longer than the 14-day limited land use notice period. There is simply no justification to provide 21 days' notice for a neighborhood meeting.

Type II Public Comment: If nearly every other jurisdiction in the state uses 14 days, why are we adding two additional days to the process? What will two days accomplish? As you likely know, in most instances people wait until the last moment to submit comments. This isn't due to a short time window—people simply file comments on the last day. Whether the period is 10 days, 14 days or 30 days, comments will be filed late in the process. Two weeks is more than sufficient to file comments to a Type II application. Moreover, as a Type II decision, if a party is unhappy with the decision, they can always appeal. Lastly, the Neighborhood Leadership Alliance (as opposed to its constituent neighborhood associations) could seek to be notified of all land use proposals and notify their members and citizens.

500 Foot Notice: Again, if state law requires 100 feet, why are we considering increasing the statutory distance by 400%? In addition to property owners, notice goes to a variety of parties, most importantly neighborhood associations. If there is an issue of concern, neighborhood associations or the NLA can get the word out. Has the city done any analysis of the additional costs involved in sending out notice to additional people? What other jurisdictions use the 500-foot distance? Again, if the NLA has significant concerns regarding notice, they can take the initiative and notify all of their members of the proposal.

Land Use Notice Sign Legible from ROW: So now we want drivers to slow down and read land use signs while they're driving? This makes no sense whatsoever. This will inevitably lead to people arguing over what is legible and what is not legible. We the letters big enough? Was the person's writing poor? Was it legible from the far lane or only the near lane? What about legibility on a 4 lane road? Was is legible at 20 mph but not 35 mph? Please, reconsider this change.

Thank you for consideration of my comments.

Regards,

Steve

**RADLER WHITE PARKS**  **ALEXANDER** LLP  
ATTORNEYS AT LAW

**Steven P. Hultberg**

PO Box 2007

Bend, Oregon 97709

P 541.585.3697 C 541.420.1024

E [shultberg@radlerwhite.com](mailto:shultberg@radlerwhite.com)

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**From:** Pauline Hardie <[phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)>

**Sent:** Thursday, September 24, 2020 4:07 PM

**To:** Pauline Hardie <[phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)>

**Subject:** Bend Development Code Amendments

Good Afternoon,

The Neighborhood Leadership Alliance (NLA) has been working with staff on potential amendments to the Bend Development Code (BDC) that relate to the current notification and public comment processes for Type II and III development applications. The City Council reviewed the amendments during a work session on September 16, 2020, and directed staff to start processing the amendments to the BDC. As part of the process, the City is interested in your feedback regarding the attached amendments. I would appreciate any comments by October 9, 2020.

Thank you,



CITY OF BEND

Pauline Hardie | Senior Code Planner  
O: 541-693-2153 | M: [phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)



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**From:** [Bill Bernardy](#)  
**To:** [Pauline Hardie](#)  
**Subject:** Re: Bend Development Code Amendments  
**Date:** Saturday, September 26, 2020 6:55:59 PM

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I support the following proposed changes:

- Extending the deadline for the public comment period for Type II applications from 14 days to 16 days
- Increasing the notification radius for Type III applications from 250' to 500'
- Requiring the posted signs for Type II and III applications to be left up for the entire public comment period

These are minor changes that have little or no impact on the time or cost of processing applications, but could have a large impact on the public's ability to participate in the review process.

In addition, I hope the Council will be presented, at some point, with the opportunity to deliberate on two other changes that were included in the original white paper critiquing the notification process:

- Increasing the notification radius for Type II applications from 250' to 500'. (There is no defensible rationale for requiring a 500' notification radius for the pre-app public meeting, but only 250' once an actual application is being reviewed.)
- Changing the timelines triggered by setting a hearing date for a Type III application, as follows:
  - the staff report should be posted online 10 days prior, rather than 7 days, so the public has time to review it and prepare for the hearing (which may involve securing counsel)
  - the deadline for public comments should be 20 days prior, so the staff can give reasonable consideration to them
  - public notice of the hearing date should be 30 days prior to the first hearing, regardless of whether one or more hearings is planned (currently, if two hearings are scheduled, notice may sent out 10 days prior, or 4 days after the deadline for comments, which makes no sense)

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**Bill Bernardy**  
541-550-6884 (c)

On Sep 24, 2020, at 4:06 PM, Pauline Hardie <[phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)> wrote:

Good Afternoon,

The Neighborhood Leadership Alliance (NLA) has been working with staff on potential amendments to the Bend Development Code (BDC) that relate to the current notification and public comment processes for Type II and III development applications. The City Council reviewed the amendments during a work session on September 16, 2020, and directed staff to start processing the amendments to the BDC. As part of the process, the City is interested in your feedback regarding the attached amendments. I would appreciate any comments by October 9, 2020.

Thank you,

[<image001.png>](#) Pauline Hardie | Senior Code Planner  
O: 541-693-2153 | M: [phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)  
[<image002.gif>](#)[<image003.gif>](#) [<image004.gif>](#)  
[<image005.gif>](#) [<image006.gif>](#)

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**From:** [Sharon Smith](#)  
**To:** [Pauline Hardie](#)  
**Subject:** RE: Bend Development Code Amendments  
**Date:** Tuesday, September 29, 2020 3:16:22 PM  
**Attachments:** [image001.png](#)

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Pauline,

I think that the requirement that signs be “legible” from the ROW is fraught with peril. Legible to whom? Pedestrians? Person in cars? Going how fast? What about persons with vision impairments? I think there should be a clear and objective standard.

Sharon R. Smith  
Attorney, Bend-La Pine Schools  
541-355-1015

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**From:** Pauline Hardie <[phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)>  
**Sent:** Thursday, September 24, 2020 4:07 PM  
**To:** Pauline Hardie <[phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)>  
**Subject:** Bend Development Code Amendments

**WARNING: This email is not from a Bend-La Pine Schools email address.**

**ALWAYS exercise caution when clicking links and NEVER provide your username, password, personal information, or confidential data if requested.**

Good Afternoon,

The Neighborhood Leadership Alliance (NLA) has been working with staff on potential amendments to the Bend Development Code (BDC) that relate to the current notification and public comment processes for Type II and III development applications. The City Council reviewed the amendments during a work session on September 16, 2020, and directed staff to start processing the amendments to the BDC. As part of the process, the City is interested in your feedback regarding the attached amendments. I would appreciate any comments by October 9, 2020.

Thank you,



Pauline Hardie | Senior Code Planner  
O: 541-693-2153 | M: [phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)



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October 6, 2020

**VIA EMAIL**

TO: Pauline Hardie  
[phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)  
CC: Makayla Oliver  
[moliver@bendoregon.gov](mailto:moliver@bendoregon.gov)

**Re: NLA Code Change Recommendations**

Dear Pauline,

Thank you for the opportunity to provide public comment regarding the proposed changes to the Bend Development Code by the Neighborhood Leadership Alliance. We understand these requested code changes would be addressing land use notification posting requirements, increased area for public notices and longer comment periods. Please accept our comments and expressed concerns pertaining to the recommendations outlined in the Memo dated September 24, Re: Proposed BDC Amendments.

Pahlisch Homes has a long history in the land development and home building industry, having worked with dozens of jurisdictions over its 37 years in business. We have strived to bring thoughtfully designed master planned communities and subdivisions to fruition throughout the Pacific Northwest. We have worked through a wide degree of code requirements from one municipality to the next, all the while working hard to serve our mission of bringing premium single family homes to market. We would like to bring caution to the proposed amendments and make light of the ripple effects these changes will have on the home building industry. We would also like to get a better understanding of the intent behind the recommendations. By our comparison, Bend is not lacking in public engagement compared to other jurisdictions, with more than adequate opportunity for public involvement per the existing Bend Development Code.

The Bend Development Code has rigorous measures already in place, the hurdles are stringent enough on a developer to clearly and objectively meet the set of standards imposed. By taking an already lengthy review process, and adding more requirements and more delays, seems counterintuitive and irresponsible in the midst of a regional housing crises; and incongruent with statewide and our City Council housing objectives. If anything, we have been seeing a greater push statewide to expedite housing, with new measures in place (House Bill 2306 for example) aimed at streamlining processes and circumventing unnecessary jurisdictional delays that may hinder needed housing, economic development and growth goals at every level.

Especially in Central Oregon, where climate is a real factor resulting in a compressed development window (mainly due to asphalt paving), our preceding entitlement timeline is critical to a project's viability. Even one week of additional time in land use planning can quickly snowball into a four-month housing delay if we look at the sum of all intentional and unintentional bureaucratic "waiting periods" along the way.

As a locally-owned company with long roots here in Bend for nearly two decades, we value local public opinion and believe public engagement is a sign of a healthy community. However, we respectfully request that prior to any code amendment decisions, we are granted the opportunity to meet with the stakeholders to better understand the underlying issues prompting these recommendations, in hopes of finding a more collaborative approach for meaningful and lasting solutions.

Sincerely Signed,

PAHLISCH HOMES, INC

Dan Pahlisch, Its President & Chairman of the Board

Cory Bittner, Its Vice President

Jerry Jones, Its Senior Director of Land Development



October 7, 2020

Pauline Hardie  
City of Bend  
710 NW Wall Street  
Bend, OR 97703

Pauline,

Thank you for the opportunity to comment on the City's proposed changes to the public noticing and comment requirements in Bend Development Code (BDC) Chapter 4.1. AKS Engineering & Forestry consults on land use planning for both public and private sector clients across the state, and these comments are sent on my own behalf, and not on behalf of any of our clients.

The proposed amendments would apply, generally, to quasi-judicial land use and limited land use applications. A significant portion of these applications involve housing, including needed housing, a matter of great concern here in Bend and across the state. Looking at both qualitative and quantitative data, most people can no longer ignore that we are facing a housing crisis. ORS 197.307(4) states that a local government may apply only clear and objective standards, conditions, and procedures regulating the provision of housing, and that such standards, conditions, and procedures cannot have the effect, either in themselves or cumulatively, of discouraging housing through unreasonable cost or delay.

Increasing noticing requirements and extending notice and comment periods will increase costs and the time it takes to secure land use approvals. Especially for housing applications subject to ORS 197.307(4), I believe this creates a problem that runs contrary to City Council goals. In fact, for housing applications subject to ORS 197.307(4), there is a strong argument to amend the BDC to meet but not exceed statutory notice requirements and comment periods in order to reduce costs and delay.

Soliciting extensive public comment on applications subject only to clear and objective decision criteria (i.e. does the project meet density, lot standards, setbacks, etc.?) also results in mismanaged expectations for neighbors and other members of the public. Even under the existing BDC, a significant portion of the public comments on needed housing applications I have worked on lean heavily on argumentation surrounding neighborhood character, livability, and other subjective, value-laden terminology that mean very different things to different people. While neighbors are often passionate about these issues, and rightfully so, they cannot drive decisions on needed housing, and are more relevant to broader legislative processes.

If the City and the Neighborhood Leadership Alliance (NLA) wish to make public involvement more accessible, relevant, and productive, rather than place the burden entirely on applicants, I would encourage consideration of new approaches and platforms. For example, in April we held a neighborhood public meeting for the Easton Master Plan. Due to social distancing measures and the inability to meet in person, we held the meeting via telephone and online

Zoom webinar. The required 500-foot notification radius resulted in us sending notice to owners of ±146 surrounding properties with detailed instructions for how to participate. We had at least 63 people call in or log on to our meeting. This is – by far – the highest response rate for any project I have worked on across the state, and I believe these types of digital platforms can boost participation and increase accessibility by allowing folks to participate who would not otherwise.

In conclusion, I have not observed that increased public notice periods, lengthier comment periods, wider mailings, and notice posted on the subject property actually achieve more accessible or productive public involvement. While the intention is good, these amendments appear to be a solution in search of a problem, and will increase costs and delay projects, including for needed housing.

Thank you in advance for your consideration.

Sincerely,

**AKS ENGINEERING & FORESTRY, LLC**



Joey Shearer, AICP – Land Use Planner  
2777 NW Lolo Drive, Suite 150, Bend, OR 97703

**From:** [Karon Johnson](#)  
**To:** [Pauline Hardie](#)  
**Subject:** Comment on PZ-20-0777.  
**Date:** Sunday, October 18, 2020 11:23:58 AM

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The city is to be commended on accepting the recommendations of the NLA to modify comment deadline times, and particularly to require that notices of Type II and Type III applications be posted within 5' of a public ROW. I can't remember how many times I've driven by a notice that was 20-30' off the road, ink runny because it was wet and with so much snow/mud between it and the road that only the most determined citizens would slog over on foot to read it.

Karon Johnson  
Land Use Chair, OFDNA