



# Town of Vienna

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## Legislation Text

File #: 16-508, Version: 1

### Subject:

Public hearing to consider Planning Commission-recommended changes to the protest vote provision in the Zoning Ordinance, **Article 24 - Rezoning and Amendments, Section 18-248 - Protest against proposed change.**

### EXPLANATION AND SUMMARY :

A recent MAC project was subjected to a protest vote, which is currently permitted under Article 24 - Rezoning and Amendments, Section 18-248 - Protest against proposed change. This protest, in turn, required a super majority vote by Council in order for the proposed project to be approved. Even though the project received a 5-2 vote in favor, it did not meet the required 6-1 super majority vote threshold. As result, the project was denied.

Given the age of the Zoning Ordinance and this provision, Council asked staff to review the code and scheduled a work session and regular meeting to debate if changes are needed to Article 24 - Rezoning and Amendments, Section 18-248 - Protest against proposed change. Following deliberation on September 24, 2016, Council suggested amending the language and directed staff to forward draft changes to the Planning Commission to review and recommend changes as appropriate.

Following numerous work sessions and public hearings, the Planning Commission has completed its review and forwarded additional recommendations and suggested changes back to Council. The item is now to be considered by Council at a public hearing to be held July 10, 2017.

Below are Planning Commission-recommended changes followed by the original draft language changes proposed by Council as well as existing Town language.

- **Black Text: Proposed compared to the current zoning code**
  - Underline: Inserted
  - ⊖ **Strike**: Removed
- **Red Text: Proposed compared to Council-recommended language**

### Planning Commission Recommended Language -Final (5/10/2017)

#### ARTICLE 24. - REZONING AND AMENDMENTS

##### Sec. 18-248. - Protest against proposed change.

In case of a protest against any change of zone boundaries or rezoning of property signed by **20 35 percent**, or more, **of any one of either of the following groups:**

- (1) The owners of lots included within the area of the proposed change; **or**,  
(2) The owners of lots abutting the area included in such proposed change **and** the owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;  
Such change shall not become effective except by the favorable vote of ~~six-sevenths~~ **two-thirds** of ~~all~~ the Town Council **quorum present**.

**For purposes of this section, a protest petition must be submitted in writing and received by the Town Clerk no later than 12 o'clock noon on the working day before the ~~day of the~~ first public hearing on the application or motion is first conducted by the town council. The owners of any lots submitting any such protest petition shall execute such protest petition under oath that they are the legal owner or authorized representative of any such lot owner. If the owner of any lot is not a natural person, the petitioner shall submit the appropriate documentation demonstrating the signatory is the authorized representative for the lot owner.**

#### Town Council-Recommended Language (10/24/2016)

Sec. 18-248. - Protest against proposed change.

In case of a protest against any change of zone boundaries or rezoning of property signed by ~~20~~ **50** percent, or more, of ~~any one of~~ the following groups:

- (1) The owners of lots included within the area of the proposed change;  
(2) The owners of lots abutting the area included in such proposed change; ~~or~~ **and**  
(3) The owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;

such change shall not become effective except by a favorable **two-thirds** vote of ~~six-sevenths of all~~ the Town Council **quorum present**.

**For purposes of this section, a protest petition must be submitted in writing and received by the Town Clerk no later than 12 o'clock noon on the working day on which a public hearing on the application or motion is first conducted by the town council. The owners of any lots submitting any such protest petition shall execute such protest petition under oath that they are the legal owner or authorized representative of any such lot owner. If the owner of any lot is a corporation or condominium, the petitioner shall submit the appropriate documentation demonstrating he/she is the authorized representative for the lot owner.**

(Code 1969, § 18-248)

#### Existing Town Code Language (Adopted 1969)

Sec. 18-248. - Protest against proposed change.

- ○ ○ ○ ○ In case of a protest against any change of zone boundaries or rezoning of property signed by 20 percent, or more, of any one of the following groups:

- (1) The owners of lots included within the area of the proposed change;  
(2) The owners of lots abutting the area included in such proposed change; or  
(3) The owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;

such change shall not become effective except by the favorable vote of six-sevenths of all the Town Council.

(Code 1969, § 18-248)

**Departmental Recommendation :** The Department of Planning and Zoning recommends that Town Council approve Planning Commission-recommended changes to Article 24 - Rezoning and Amendments, Section 18-248 - Protest against proposed change with the exception of changing the required percentage of those protesting the vote from 50%. The 50% standard is consistent with draft language Council forwarded to the Planning Commission, and staff believes the bar set for requiring a super majority vote should be high.

Since most jurisdictions in Virginia do not have a protest vote allowance in their ordinances, another option for Council to consider is to eliminate the protest vote altogether and rely on the already required public hearing process to gain public input and majority vote requirement for rezoning approvals.

**Finance Recommendation :** N/A

**Purchasing Recommendation :** N/A

**Town Attorney Recommendation :** Town Council may conduct a public hearing on the proposed amendments to Chapter 18, Section 18-248 in its discretion. After consideration of public input and the recommendations of the Planning Commission, Town Council may adopt changes to Section 18-248 of the Town Code in its discretion.

**Town Manager Recommendation:** I recommend the Town Council adopt the recommendations of the Planning Commission as presented.

Cost and Financing: N/A

Account Number: N/A

Decision Needed by This date: N/A

#### **PROPOSED/SUGGESTED MOTION**

"I move that Town Council close the public hearing."

"After consideration of input of from the public at an advertised public hearing and the recommendations of the Planning Commission, I further move for approval of the proposed changes to Article 24 - Rezoning and Amendments, "**Section 18-248 - Protest against proposed change**" as proposed with the exception that the required percentage of those protesting the vote shall be 50%. I further move to direct the Town Clerk to advertise an intent to adopt at the August 21, 2017, Town Council meeting."

Or, such action as Council deems appropriate.