



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

Date: July 13, 2017
From: Staff
To: Planning Commission
Re: Public Notice Discussion and Direction

KEY POINTS AND CONCERNS:

1. The current zoning Code requires 2 published notices, which is 1 more than other commissions and even the Assembly are required to have.
2. Reduction in 1 published notice would be coupled with the addition of on-site posting of notice, multi-modal notice, notice to renters/tenants, etc.
3. Proposal better notifies the public and interested parties and saves up to \$10,000 per year.

UPDATE:

The following is the staff report that was to support a minor code change regarding Sitka General Code Sections 22.30.110 and 22.30.120. However, as staff drafted the amendments it became apparent that it would be best to holistically redraft the entire Chapter 22.30 as it implicates appeal rights, process of review, findings, authority for action/decision, and when notices are required. While staff is highly confident the proposed draft language below is a major improvement, staff feel it is best to take a step back and make sure we address all issues implicated in Chapter 22.30 and other land use code sections such as subdivision code. Staff envision that after the approval and adoption of the Comprehensive Plan, that there will be a major overhaul of land use codes (e.g. Title 22, 21, 18) and other ancillary code provisions that relate to Planning and Community Development. It would be most efficient to make sure that any piecemeal code changes be rewritten in such a way that it can be added to future code edits with little to no additional work. Further, the suggested code edits implicate major legal issues and will need the review of the Municipal Attorney. To date, the Municipal Attorney is supportive of this direction in theory.

RECOMMENDATION:

Staff recommends that the Planning Commission move to direct staff to draft proposed code amendments regarding Chapter 22.30 (Zoning Code Administration) and Chapter 21.52 (Subdivision Administration), for all implicated topics that may include but are not limited to notice, mailings, on-site postings, notices to renters/tenants, review and approval process, appeals, findings, authority of bodies, application, and amendments.

BACKGROUND

Public notice is integral to an open form of government and also to fair decision making. Public notice is a part of the due process protections afforded all citizens. For hundreds of years, public notice has been included in newspapers. Currently, all other city business occurs with less required public notice than the business, decision making, and deliberations that come before the Planning Commission.

It is important to note that the more impact the government action has to someone's person, property, and pursuit of life, liberty, and happiness, the greater requirements of due process protections such as notice¹. These constitutional protections include substantive and procedural due process requirements. Decisions in front of the Planning Commission that are non-legislative land use decisions or quasi-judicial both require certain procedural due process protections that include notice.

The State of Alaska Open Meetings Act² requires that all meetings open to the public provide reasonable public notice as established in the municipality's Charter or ordinance governing that body. Per our existing law, charter and code, reasonable notice of an open meeting must include a concise:

1. Statement of date, time and place
2. Statement of location and time that is reasonably accessible
3. Description of action requested and/or subject of discussion
4. Description of property involved
5. Statement of names of the property owners
6. Names of the applicants

For a typical item for City Assembly, only one published advertisement is required per Chapter 2.36. Currently, our zoning code requires two published advertisements of the Notice (SGC Section 22.30.120(A)(1)). In addition, our zoning code also requires mailings be sent to adjacent properties within so many feet of the proposed project site.

The proposal is to reduce from two published notices to one published notice with at least 5 calendar days. In addition, we propose to add, as a requirement, a site posting. This proposal would save the city between \$5,000 and \$10,000 a year, while also providing very reasonable notice. In addition, our department has enacted new notice formats that we hope give citizens the critical information and also the resource to find our more. Overall, the proposal is one that we feel provides reasonable, adequate, and efficient notice while also preserving public knowledge and reducing costs.

¹ "The fifth and fourteenth amendments prohibit government from depriving any person of life, liberty, or property without due process of law." John E. Nowak and Ronald D. Rotunda, Constitutional Law, Ch. 13 (6th ed. 2000)

² AS 44.62.310-.312

Current Sitka General Code for City Assembly Notices:

Chapter 2.36

PUBLIC NOTICE OF MEETINGS⁵

2.36.010 Required.

Reasonable public notice shall be given of all meetings of an administrative body, board, commission, committee, subcommittee, authority, agency or other organization including subordinate units of the above groups of the city and borough including but not limited to assembly, school board, platting board, departments, commissions or organizations advisory or otherwise of the city and borough supported in whole or in part by public money or authorized to spend public money. (B.C.S. § 2.12.010.)

2.36.020 Publication.

Reasonable public notice is given if a statement containing the date, time and place of the meeting is published not less than twenty-four hours before the time of the meeting in a newspaper of general circulation published within the city and borough or not less than twenty-four hours before the time of the meeting by posting such statement in three public places within the city and borough or by announcement of such meeting twenty-four hours before the time of the meeting on radio or television stations within the city and borough with an affidavit of broadcasting given by such radio or television stations. If the meeting is a special meeting, then the above statement shall also contain the expected subjects of discussion, but the failure to list a subject shall not invalidate any action taken in respect thereto. (B.C.S. § 2.12.020.)

2.36.030 Emergency meeting.

An emergency meeting of the assembly or school board may be held after such public notice as is reasonable under the circumstances without regard to the publication requirements in Section [2.36.020](#), upon the affirmative vote of all members present, or the affirmative vote of three-quarters of those elected that a public emergency affecting life, health, welfare or property exists and that reasonable public notice of the meeting has been given. Any action taken at an emergency meeting is valid only for sixty days. (B.C.S. § 2.12.030.)

2.36.040 Meeting location.

Meetings required to be open to the public under this chapter and the state open meeting law shall be held in a location and at a time reasonably accessible to the public. (Ord. 00-1567 § 4, 2000.)

Proposed Notice Language

- **Purpose.** The purpose of the Public Notice Section is to cover all notice requirements required for public meetings under Title XX, to best inform the public of prospective decisions before the Planning Director, the Planning Commission or other pertinent commission, and the City Assembly, and to provide the public and interested property owners with the relevant information being decided or discussed.
- **Notification.** All notices shall follow the regulations in this section. Reasonable public notice shall be given for any item or meeting coming under this title and shall follow all applicable public notice regulations. Notices required by this title shall include a concise:
 - Statement of date, time and place
 - Statement of location and time that is reasonably accessible
 - Description of action requested and/or subject of discussion
 - Description of property involved
 - Statement of names of the property owners (if applicable); and
 - Names of the applicants
 - Description of how and where more information of the proposed project can be found
 - Notice of Right to Appeal Decision or Action within 10 days of the decision or action.
Appeal shall be filed pursuant to SGC XX.
- **Publication:** all projects before a public body subject to the Open Meetings Act shall be noticed and published in a newspaper of general circulation within the city and borough on at least one occasion prior to the meeting. This one publication shall be at least five calendar days before the meeting;
- **Mailing.**
 - Notice by mailing is required to be sent to:
 - owners of property within 300 feet of a proposed conditional use permit, major variance, marijuana conditional use permits, Planned Unit Development/Cluster Home Developments; and non-conforming use permits by sending notices by first class mail at least five days prior to the date of hearing or decision to all property owners with the prescribed distance using the names and addresses as they appear on the records of the city and borough assessor;
 - owners of property within 150 feet of a proposed temporary conditional use permit, short-term rental conditional use permit, bed and breakfast conditional use permit, commercial home horticulture permit, minor variance, and other minor projects as determined by the Planning Director or Planning Commission by sending notices by first class mail at least five days prior to the date of hearing or decision to all property owners with the prescribed distance using the names and addresses as they appear on the records of the city and borough assessor;
 - the immediate adjacent property owners of any proposed administrative approval, administrative variances, or other minor permits or amendments that may impact the adjacent property owner by sending notices by first class mail at least seven days prior to the date of hearing or decision to all property owners with the prescribed distance using the names and addresses as they appear on the

records of the city and borough assessor.

- Mailed notice **shall not** be required for projects that have City wide impacts such as zoning map amendments, Sitka General Code changes, and similar legislative considerations.
- **Site Posting.** For all projects, a site posting notice shall be posted in a conspicuous location at the site of the proposed development or action until the decision affecting it is made. The document containing the posted notice shall be readily visible, safely accessible, and inspectable by a member of the general public. Should extenuating circumstances such as safety, topography, or location make a site posting unreasonable or impracticable, the Planning Director may waive this requirement upon a written finding of such extenuating circumstances, but all other notice due shall occur. Site posting shall only grant a member of the public access to the posted notice, but not the property at large.
- **Multi-modal notice.** To expand the diversity of notice to the public, four (4) of the following publications of notice shall occur:
 - Posting of notice on a City maintained website;
 - Posting of notice on a City maintained community bulletin board;
 - Posting of notice on a public community calendar;
 - Posting of notice on a major social media platform;
 - Distribution of a mass email or text; and/or
 - Publication of a Public Service Announcement or Notice in print, video/TV, or radio.
- **Emergency Meeting Exception.** An emergency meeting of any public municipal body to hear items covered under this title, in any of their capacities (e.g. Planning Authority, Board of Appeals, etc.) may be held after such public notice as is reasonable under the circumstances without regard to the publication requirements upon the affirmative vote of at least 4 commission members that a public emergency affecting life, health, welfare or property exists and that reasonable public notice of the meeting has been given. Any action taken at an emergency meeting is valid only for sixty days. (taken and based from SGC Section 2.36.030).
- **Additional Notice Required Where Found Extenuating Circumstances or Matters of Extreme Community Importance.** Where it is found in written decision by the Planning Director or any city assembly, board, or commission, that circumstances warrant additional notice, such additional notice may be required that is reasonable under the circumstances.
 - In the circumstance that it is found or known that renters or tenants are implicated at the site location, the applicant shall provide notice to all renters and tenants of the proposed project that complies with all notification requirements in this chapter. The Planning Director shall have the authority to direct the applicant to take such action or to invalidate any approval if it is found that has not occurred.
- **File Available for Public Action.** From the time of filing such application until the time for such public hearing, the application, together with all relevant data, plans or maps, shall be available for public inspection in the office of the planning director.
- **Consideration of Evidence.** The planning commission shall hear and consider evidence and facts

from any person at the public hearing or receive written comments from any person relative to the matter brought before the commission. The right of any person to present evidence shall not be denied for the reason that such person was not required to be informed of such a public hearing. (Scarcelli feels this should be more in a section regarding review process, not notice).

- **Notice required when meeting or agenda item rescheduled.** If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and notice shall be provided that is reasonable under the circumstances.

Analysis with Findings

Due process and notice as proposed would still provide a high level, if not higher level of notice. The reduction of the one published newspaper notice will be made up for by the on-site notice, additional multi-modal notices that target various populations. Overall, this will give the general public and adjacent properties better notice about an action under consideration.

This change is not anticipated to negatively impact the public, health, safety and welfare, and instead will provide better more efficient notice as well as reducing costs all of which are positive impacts to the public's health, safety, and welfare.

Further, the proposed language is more uniform with the general notice requirements for the City as a whole. This adds additional support for adopting the proposed language for Planning's purposes. (Would this proposal better support due process requirements).

The Comprehensive Plan states under goal Governmental Goals and Policies, "To assure widespread and thorough public awareness of pending actions of the Borough which are significant to the well-being of the community." Again, while publication is one form of notice, it is a costly form. We can still provide general published notice, while also adding site specific and multi-modal notice that will add to the *thorough* nature of our notice, while reducing costs.

Overall, it can be **found** that

1. the proposal does not negatively impact the public health safety or welfare, but better notifies the public of pending action in an public meeting;
2. the proposal comports with all code, laws, and principles that protect public notice and due process; and
3. the proposal complies with the Comprehensive Plan by providing *thorough* and reasonable notice of all pending actions of the Planning Commission.

Recommendation

Staff recommends that the Planning Commission move to direct staff to draft proposed code amendments regarding Chapter 22.30 (Zoning Code Administration) and Chapter 21.52 (Subdivision

Administration), for all implicated topics that may include but are not limited to notice, mailings, on-site postings, notices to renters/tenants, review and approval process, appeals, findings, authority of bodies, application, and amendments.

Suggested Motions

1. I move to find that
 - a. the proposal does not negatively impact the public health safety or welfare, but better notifies the public of pending action in a public meeting;
 - b. the proposal comports with all code, laws, and principles that protect public notice and due process; and
 - c. the proposal complies with the Comprehensive Plan by providing *thorough* and reasonable notice of all pending actions of the Planning Commission.
2. I move to direct planning and legal staff to draft proposed code amendments regarding Chapter 22.30 (Zoning Code Administration) and Chapter 21.52 (Subdivision Administration), for all implicated topics that may include but are not limited to notice, mailings, on-site postings, notices to renters/tenants, review and approval process, appeals, findings, authority of bodies, application, and amendments.