

Legislation Details

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To The President and Members of
The Council of the City of Philadelphia:

For the following reasons, I am returning to your Honorable Body as disapproved Bill No. 120889, which was passed by Council at its session on December 13, 2012.

Bill No. 120889 amends the system of notice to registered community organizations ("RCOs") established by the new Zoning Code, which became effective August 22, 2012. The new Zoning Code formally codified the existing practice of public sign notice for zoning variances and special exceptions. It also added rules for how RCOs could register with the City Planning Commission, and added a new requirement for the zoning applicant to notify, and conduct a single meeting with, the registered RCOs whose boundaries include the development property. The new Code further added a similar RCO notice and meeting requirement for major development projects that would be subject to a newly-created Civic Design Review process.

Bill No. 120889 would require the RCOs themselves in the area of a project, in addition to the zoning applicants, to provide individual, written notice to each near neighbor of the project (on various block faces in the vicinity of the project). The bill would also allow for the possibility of mandatory multiple meetings with RCOs that have overlapping geographic boundaries; would repeal the authorization for the City Planning Commission to establish minimum RCO qualifications, beyond the limited information expressly authorized in the Zoning Code; and would expand the composition of the Civic Design Review Committee to include a seat for a designee of the local district councilmember and a second local RCO seat.

Community involvement in development matters was the single issue, of all the issues that received attention in the five-year Zoning Code process, that received the most debate and attention. The registered community organization system put forth by the new Zoning Code represents a carefully crafted and delicate balance between streamlining development and providing meaningful community input. Bill No. 120889 threatens to disrupt this balance by creating significant ambiguities and legal issues, opening the door to litigation challenging the validity of various zoning approvals.

The City Solicitor has provided a letter dated December 21, 2012 (a copy of which is attached), detailing the legal issues with each of the aforementioned elements of Bill No. 120889. Of most concern are the notice requirements to near neighbors and the potential for multiple meetings with RCOs that have overlapping geographic boundaries.

With respect to notice to near neighbors, the bill would require certain zoning applicants, as well as the relevant RCOs themselves, to notify each property owner and occupant on various block faces in the vicinity of the development property. These extensive and detailed notice requirements inevitably will lead to litigation regarding non-compliance, as even good faith compliance will prove difficult for many applicants and RCOs. For example, the bill is unclear as to whom applicants and RCOs must provide notice in the case of multi-occupant buildings (e.g. offices, condominiums, apartment buildings). Such ambiguity places significant burden on applicants and RCOs to identify each occupant, makes zoning approvals ripe for litigation on the basis of incomplete notice, and consequently, sends a negative message to the development community.

With respect to meetings with overlapping RCOs, the bill would require a zoning applicant to meet with each RCO separately, upon the request of any single RCO and subsequent joint determination by the district councilmember, the City Planning Commission, and the Zoning Board of Adjustment. Currently, the Code requires the RCOs to coordinate a single meeting. The point of the single meeting requirement was intended to streamline the development process. I am concerned that the possibility of multiple meetings with community groups will frustrate the purpose of the RCO meeting requirement - to establish a predictable and circumscribed mechanism for gathering community input into the zoning process. I also note that the City Solicitor has determined that Council does not have the authority to delegate to district councilmembers the administrative power to make determinations with respect to the process for handling individual zoning cases.

Beyond these specific issues, I am deeply concerned about significant changes to the new Zoning Code mere months after it has gone into effect. The registered community organization system in the new Code provides more legally required opportunity for community involvement in the development process than ever before, and it is impossible to evaluate the merits of this new system after only four months of operation. Bill No. 120889 addresses problems that may be perceived, but we do not yet know exist.

As requested by Council, my Administration will submit to Council a report setting forth its analysis of the City's experience with the Code, as well as its recommendations to further improve the Code, one year after the new Code became effective. I respectfully urge Council to withhold any further changes to the new Zoning Code until the one-year analysis is complete.

I appreciate the sensitivity of the topic of community involvement in the development process and respect the attention Councilwoman Blackwell has paid to this important issue. I also appreciate her willingness to work with PCPC and my staff on this bill. In my view, however, this bill creates numerous substantial problems. Moreover, I believe the new Zoning Code should be permitted to operate for one year before significantly amending it. I am therefore returning Bill No. 120889 to you as disapproved.

Respectfully,
Michael A. Nutter,
Mayor

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