

FILE NUMBER: DCA189-004

DATE INITIATED: April 8, 2019

TOPIC: Zoning Property Owner Notification and Written Protest Deadlines

CITY COUNCIL DISTRICTS: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending regulations pertaining to the timeline for mailing property owner notifications prior to the City Council public hearing; the deadline for filing a written protest prior to the City Council public hearing; and increasing the area of notification for authorized hearings in Chapter 51A Section 51A-4.701 of the Dallas Development Code.

SUMMARY: The proposal includes: (1) mailing the public hearing notices 15 days prior to the City Council public hearing; (2) requiring reply forms and affidavits to be returned before noon on the Friday preceding the City Council public hearing; and (3) changing the area of notification for authorized hearings to be consistent with the area of notification for paid applications for straight zoning requests.

CPC RECOMMENDATION: Approval.

STAFF RECOMMENDATION: Approval.

BACKGROUND INFORMATION:

During the February 13, 2019, City Council public hearing, the validity of an affidavit in opposition of a zoning change request was questioned by the applicant.

On April 8, 2019, Sustainable Development and Construction staff briefed the Mobility Solutions, Infrastructure, & Sustainability Committee (MSIS) on zoning property owner notifications and the notification process. The MSIS committee recommended the issue be sent to the Zoning Ordinance Advisory Committee (ZOAC) and City Plan Commission (CPC) to review, research, and determine if amendments are needed. Topics to be considered: (a) mail notices not less than 15 days before the City Council public hearing; (b) require reply forms and affidavits to be returned before noon on the Friday preceding the public hearing; (c) increase the area of notification for authorized hearings; and (d) mail notices to resident/occupant in addition to the property owner.

ZOAC considered this item on May 2, 2019; May 16, 2019; July 11, 2019; and September 5, 2019 and recommended to proceed to CPC.

On October 17, 2019, CPC was briefed on this item and on November 7, 2019, recommended the proposal to proceed to City Council for consideration.

On January 21, 2020, the Transportation and Infrastructure Committee (TRNI) was briefed on this item and recommended to forward the proposal to full City Council for consideration.

GENERAL INFORMATION/STAFF ANALYSIS:

The MSIS Committee recommended looking into:

1. Mailing notices not less than 15 days before the City Council public hearing;
2. Requiring reply forms and affidavits to be returned before noon on the Friday preceding the public hearing;
3. Increasing the area of notification for authorized hearings; and
4. Mailing notices to resident/occupant in addition to the property owner.

1. Mailing notices not less than 15 days before the City Council public hearing; and
2. Requiring reply forms and affidavits to be returned before noon on the Friday preceding the public hearing;

Currently, the Dallas Development Code requires written notice of a public hearing to be sent to property owners not less than 10 days before the public hearing at CPC and City Council with original reply forms or affidavits to be returned before noon the working day immediately preceding the public hearing.

The proposed amendment increases the mailing timeline for the City Council public hearing from 10 days to 15 days. The reply forms and affidavits for the City Council public hearing are to be returned before noon on the Friday preceding the public hearing. No

changes are recommended to the CPC mailing dates. The proposed amendment requiring property owner notices to be mailed 15 days prior to a City Council public hearing does not increase or prolong the time it takes for a zoning application to process. However, if the same 15 day mailing date was required prior to CPC public hearing it would affect the processing time; lengthening the time it takes for a zoning application to be processed.

Currently, when a zoning application is submitted, a notification letter and reply form is mailed to each property owner listed on the last approved tax roll within the designated notification area. A property owner may protest the zoning change by submitting the reply form they received in the mail, a notarized affidavit, or another acceptable form of protest. Currently, the due date for returning the reply form or affidavit is noon the day before the public hearing, they are then tabulated and Council receives the tabulation the evening prior to the Council hearing. This tabulation is important because a written protest against a zoning request signed by owners of 20% or more of the land within the area of request or land within 200 feet, including streets and alleys, measured from the boundary of the area of request will require a favorable vote of three-fourths of City Council to approve.

The proposed amendment requires reply forms and affidavits to be returned before noon on the Friday preceding the public hearing rather than noon the day before the public hearing. This change will allow tabulation of the reply forms earlier than the current timeline. Therefore, if a zoning agenda item requires 3/4 vote by the City Council to approve due to 20% opposition, Mayor and Council Members would receive the tabulation of the responses on Friday prior to the public hearing, instead of the evening before the hearing.

The proposed amendments to the mailing date and deadline for submitting reply forms prior to the City Council public hearing do not affect or change Presumption of Validity, Section 51 A-4.701 in the Dallas Development Code addressing a protest at City Council.

The Dallas Development Code, Section 51 A-4.701, (g) (7), Presumption of Validity:

- (a) In all cases where a protest has been properly signed pursuant to this subsection, the city shall presume that the signatures appearing on the protest are authentic and that the persons or officers whose signatures appear on the protest are either owners of the property or authorized to sign on behalf of one or more owners as represented.
- (b) In cases of multiple ownership, the city shall presume that a properly signed protest which on its face purports to represent a majority of the property owners does in fact represent a majority of the property owners.
- (c) The presumptions in Subparagraphs (A) and (B) are rebuttable, and the city attorney may advise the city council that a presumption should not be followed in a specific case based on extrinsic evidence presented.

3. Increasing the area of notification for authorized hearings.

Currently, the Code requires written notice of a public hearing on a City Council, City Plan Commission, or Landmark Commission authorized hearing for a change in a zoning district be mailed to the property owners within 200 feet of the boundary of the area of request.

The proposed amendment increases the notification area for the authorized hearings on a sliding scale based on the size of the area, consistent with the area of notification required for hearings for straight zoning applications when an applicant makes a request.

Size of Authorized Hearing Area:	Area of Notification
0-1 acre	200 feet
over 1 acre to 5 acres	300 feet
over 5 acres to 15 acres	400 feet
over 15 acres to 25 acres	400 feet
over 25 acres	500 feet

4. Mailing notices to resident/occupant in addition to the property owner:

Currently, the City Code, in accordance with the Texas Local Government Code, Section 211.007(c), requires public hearing notices to be mailed to the property owners as as evidenced by the last approved municipal tax roll.

Staff looked into the possibility of mailing the public hearing notices to the resident/occupant in addition to the property owner. If the property owner is also the resident/occupant, they will receive two notices, one with the reply form and another without. This could be confusing to the property owner/resident. Additionally, it is not easy to access resident/occupant data as the tenant information is not held in the Appraisal District database. Currently, there is no reliable/valid database available to use for mailings to all the resident/occupant within the area of notification. Therefore, there is no way to affirm, if required by Dallas Development Code to notify all resident/occupant, that all resident/occupant were notified.

To address this concern, the following language has been added to the notification of public hearing letter sent to the property owner: "the City encourages the property owner to inform tenants of potential zoning changes."

Additional items discussed during the ZOAC meetings and CPC briefing:

During the ZOAC meetings and CPC briefing, the committee reviewed:

- Zoning signs
- Zoning notices and forms
- Online access to zoning cases

The Committee recommendations do not require changes to the current Code, but the recommended changes will be implemented.

Zoning Signs:

The most recent amendments to zoning notification and zoning signs regulations were done in 2007 and 2015: On February 14, 2007, the City Council approved an amendment to Section 51A-1.106 of the Dallas Development Code to address the number and timing of notification signs; and On January 23, 2015, City Council approved changes to the Sec.51A-1.106 of the Dallas Development Code to clarify the intent of the notification signs and posting.

ZOAC and CPC reviewed other cities' zoning signs and recommended to:

- Increase the font size of the case number and Include contact information in Spanish;
 - To be implemented by April 1, 2020.
- Include in the posting of notification sign affidavit, the directions that the sign must be mounted a minimum 24 inches above the ground and be fully legible from street level.
 - The zoning notification sign affidavit form has been updated to provide the instructions.

Zoning notices and forms:

- Spanish notification mailings:
 - Note has been added to the front of the mailing envelope indicating that Spanish information is included in the envelope.
 - Informational note in Spanish on the location map has been added.
- First sentence on Reply Form has added “see attached map” for clarification of property location.

Online access to zoning cases:

- Tools currently in place for easy online access to zoning cases:
 - Zoning signs include a QR code to provide easy access to zoning cases online.
 - Webpages are updated and maintained regularly for accuracy and reliability.

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE (TRNI):

On January 21, 2020, during the TRNI meeting, specific information was requested on other cities.

- Zoning sign dimensions:
 - Plano: 48 inches X 48 inches, two-sided wooden or opaque coroplast signs
 - Richardson: sign 24 inches X 36 inches, metal

- Area of notification for zoning changes:
 - Arlington: 200 feet, or 1,320 feet if the application includes a gas well, including streets, alleys, and other rights-of-way;
 - Austin: 500 feet
 - Cedar Hill: 200 feet
 - Plano: 200 feet
 - Richardson: 200 feet
 - San Antonio: 200 feet

CPC ACTION
November 7, 2019

Motion: It was moved to recommend **approval** of amending Chapter 51A of the Dallas Development Code, Section 51A-4.701 to amend regulations pertaining to the timeline for mailing property owner notifications prior to the City Council public hearing; the deadline for filing a written protest prior to the City Council public hearing; and increasing the area of notification for authorized hearings.

Maker: Murphy
Second: MacGregor
Result: Carried: 14 to 0

For: 14 - MacGregor, Hampton, Johnson, Shidid,
Carpenter, Brinson, Blair, Jung, Housewright,
Schultz, Schwope, Murphy, Ridley, Rubin
Against: 0
Absent: 0
Vacancy: 1 - District 3

Speakers: None

10-8-19

ORDINANCE NO. _____

An ordinance amending Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code by amending Section 51A-4.701; providing a graduated scale for the notification area for authorized zoning cases; requiring mailed notices be sent 15 days prior to city council hearings; requiring written protest be filed with the director before noon on the Friday before the city council public hearing; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, have given the required notices and have held the required public hearings regarding this amendment to the Dallas City Code; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Paragraph (5) of Subsection (b), "Commission Report and Recommendation Required," of Section 51A-4.701, "Zoning Amendments," of Division 51A-4.700, "Zoning Procedures," of Article IV, "Zoning Regulations," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code is amended to read as follows:

"(5) The director shall send written notice of a public hearing on a city council, city plan commission, or landmark commission authorized hearing for a change in a zoning district classification or boundary to all owners of real property according to the following table: [~~lying within 200 feet of the boundary of the area of request.~~]

<u>Authorized Hearing Area</u>	<u>Area of Notification for Hearing</u>
<u>0-1 acre</u>	<u>200 feet</u>
<u>over 1 acre to 5 acres</u>	<u>300 feet</u>
<u>over 5 acres to 15 acres</u>	<u>400 feet</u>
<u>over 15 acres to 25 acres</u>	<u>400 feet</u>
<u>over 25 acres</u>	<u>500 feet</u>

See Section 51A-1.105 for the notification area for other applications. The measurement of the notification area includes streets and alleys. The notice must be given not less than 10 days before the date set for the city plan commission hearing by depositing the notice properly addressed and postage paid in the United States mail to the property owners as evidenced by the last approved tax roll. This notice must be written in English and Spanish if the area of request is located wholly or partly within a census tract in which 50 percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census. The applicant may not alter, change, amend, enlarge, or withdraw a portion of an application after notices have been mailed for the public hearing.”

SECTION 2. That Subsection (c), “City Council Action,” of Section 51A-4.701, “Zoning Amendments,” of Division 51A-4.700, “Zoning Procedures,” of Article IV, “Zoning Regulations,” of Chapter 51A, “Dallas Development Code: Ordinance No. 19455, as amended,” of the Dallas City Code is amended to read as follows:

“(c) City council action.

(1) The director shall send written notice of a public hearing on a city council, city plan commission, or landmark commission authorized hearing for a change in a zoning district classification or boundary to all owners of real property according to the following table:

<u>Authorized Hearing Area</u>	<u>Area of Notification for Hearing</u>
<u>0-1 acre</u>	<u>200 feet</u>
<u>over 1 acre to 5 acres</u>	<u>300 feet</u>
<u>over 5 acres to 15 acres</u>	<u>400 feet</u>
<u>over 15 acres to 25 acres</u>	<u>400 feet</u>
<u>over 25 acres</u>	<u>500 feet</u>

See Section 51A-1.105 for the notification area for other applications. The measurement of the notification area includes streets and alleys. The notice must be given not less than 15 days before the date set for the city council hearing by depositing the notice properly addressed and postage paid in the United States mail to the property owners as evidenced by the last approved tax roll. This notice must be written in English and Spanish if the area of request is located wholly or

partly within a census tract in which 50 percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census. The applicant may not alter, change, amend, enlarge, or withdraw a portion of an application after notices have been mailed for the public hearing.

(2) Before the city council holds the public hearing on an amendment to this article or on a request for a change in a zoning district classification or boundary, the city secretary shall give notice of the public hearing in the official newspaper of the city at least 15 days before the hearing.

(3[2]) An amendment to this article and requests for a change in a zoning district classification or boundary must be approved by the affirmative vote of a majority of city council members present; except, the favorable vote of three-fourths of all members of the city council is required if:

(A) the request for a change in a zoning district classification or boundary has been recommended for denial by the commission; or

(B) a written protest against a change in a zoning district boundary or classification has been signed by the owners of 20 percent or more of either the land in the area of request or land within 200 feet, including streets and alleys, measured from the boundary of the area of request and the protest has been filed with the director.

(4[3]) When city council passes an amending ordinance, the city secretary shall file the amending ordinance in the official city records. Unless the amending ordinance expressly indicates otherwise, the area of request is presumed to include the area to the centerline of an adjacent street or alley.”

SECTION 3. That Subparagraph (A) of Paragraph (5), “Filing Deadline,” of Subsection (g), “Written Protest Procedures,” of Section 51A-4.701, “Zoning Amendments,” of Division 51A-4.700, “Zoning Procedures,” of Article IV, “Zoning Regulations,” of Chapter 51A, “Dallas Development Code: Ordinance No. 19455, as amended,” of the Dallas City Code is amended to read as follows:

“(A) A written protest must be filed with the director before noon on [of] the Friday [~~working day~~] immediately preceding the date advertised for the city council public hearing in the statutory notice published in the official newspaper of the city. If the deadline falls on a city holiday, written protest must be filed by noon on the next working day after the deadline. A protest sent through the mail must be received by the director before the deadline.”

SECTION 4. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 5. That Chapter 51A of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 7. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO, Interim City Attorney

By _____
Assistant City Attorney

Passed _____