

Memorandum



CITY OF DALLAS

DATE March 29, 2019

TO Honorable Mayor and Members of the City Council

SUBJECT **Authorized Hearings – City Initiated Zoning**

There has been a recent increase in the number of and interest in authorized hearings managed by the Sustainable Development and Construction Department. This memorandum 1) provides an overview of authorized hearings, 2) explains the current staff resources, processes, and timelines, and 3) discusses various options under consideration to improve productivity.

Authority for City initiated zoning

City-initiated zoning, also known as authorized hearings, is one of two methods for initiating a zoning case. Section 51A-4.701(a) of the Dallas City Code specifies the notification requirements for authorizing a hearing. For areas with 10 or fewer property owners, a notification must be sent to each property owner at least 10 days prior to the meeting at which either City Plan Commission (CPC) or City Council will consider the authorization. For an area with more than 10 property owners, notification in the newspaper at least 10 days prior to the CPC or Council hearing is required.

The request to place an item on an agenda for consideration of initiation must come from a three-member memo from City Plan Commission or a five-member memo from City Council. Requests should be placed on the agenda within 30 days of receipt per the CPC rules of procedure and the City Council rules of procedure. The consideration of authorization is a public hearing and is not the changing of the zoning. The Landmark Commission (LMC) may initiate consideration of historic overlays but not zoning. This process is being amended, but currently requires one Landmark Commissioner to place the item for consideration on the LMC agenda. In all cases, a majority vote of the City Council or the Commission is required to initiate the authorized hearing.

Creation of the Authorized Hearing/Code Amendment Section

As part of discussions with development stakeholders, the functions of the former Development Services Department that did not collect application fees were moved from the Enterprise Fund to the General Fund. The two functions within the Current Planning Division that did not collect application fees were the Historic Preservation Section and the function of Code amendments and authorized hearings. As a result, the Authorized Hearing/Code Amendment Section (AH/CA) was created in the FY11-12 Budget with General Funds.

The creation of the AH/CA section provided funding for City-initiated zoning cases and allowed the Zoning planners under the Enterprise Fund to focus solely on paid applications. The new section also allowed for closer oversight of the authorized hearings providing more consistency in adherence to City Codes, policies, and processes. Prior to the creation of the section, authorized hearings were handled by planners under different management within the Department often resulting in disparate recommendations for similarly situated areas.

Initially, the AH/CA section had two FTEs. In the FY12-13 budget, two FTEs were added to the Section. Duties were reassigned in FY17-18, to provide a Chief Planner to oversee the four Senior Planners and manage the workload. Prior to FY17-18, the Chief Planner split responsibilities between the AH/CA and the Board of Adjustment.

The AH/CA Section is responsible for:

- Authorized hearings,
- Code amendments,
- New Conservation Districts, Neighborhood Stabilization Overlays, Accessory Dwelling Unit Overlays, and the proposed Neighborhood Forest Overlays,
- Amendments to existing Conservation Districts, Neighborhood Stabilization Overlays, Accessory Dwelling Unit Overlays, and the proposed Neighborhood Forest Overlays.

The Conservation Districts, Neighborhood Stabilization Overlays (NSO), Accessory Dwelling Unit Overlays (ADU), and proposed Neighborhood Forest Overlays (NFO) have procedures and deadlines specified in the Code. Whether or not a fee is required depends on the number of signed petitions returned. The Code indicates these cases are to be treated like an authorized hearing. Neighborhood meetings are required throughout the processes. As these cases are initiated by a neighborhood committee and have deadlines, AH/CA staff must adjust workload and schedules for authorized hearings and code amendments to accommodate these requests.

AH/CA staff is currently working on:

- One Conservation District amendment, approved at City Council on January 9, 2019;
- Two potential NSOs, meeting with the Neighborhood Committees and providing technical guidance;
- Four Code amendments – Mixed Income Housing Development Bonuses, Article XIII amendments, Neighborhood Forest Overlay, and amendment to required parking for schools.

The four code amendments are in various stages including full City Council approval, community outreach and input, and research. Staff completed eight amendments in FY17-18.

Current authorized hearing workload and process

Four authorized hearings were completed in FY17-18. Currently, four authorized hearing cases are active, and 11 cases are pending. Of the four active cases, two were authorized in 2016 and two in 2017. Of the 11 pending cases, one was authorized in 2016, four in 2017, five in 2018, and one in 2019. Authorized hearings are scheduled and processed by staff in the order of authorization. The City Manager's office made an exception to this policy in 2018 after determining extenuating circumstances warranted expediting one authorized hearing. Extenuating circumstances included multiple people being displaced from residences due to a catastrophic event (fire) beyond the owners control and there was not a reasonably economic way to reestablish the previous use of the property without amending current zoning standards.

One of the active cases, Planned Development District No. 521 amendments, had its second community meeting in January 2019. The amendments were on the March 21, 2019 City Plan Commission agenda for consideration, but the item was held under advisement until May 2019. A second active case, PD No. 15 Preston Tower, completed the Steering Committee phase and had its second community meeting in February 2019. The next steps are consideration by CPC and Council.

Two authorized hearings are at the beginning stages. The first community meeting for an authorized hearing to review certain MF-3 Multifamily and GO General Office Subdistricts within Planned Development District No. 193 in Oak Lawn was held in December 2018. The Steering Committee meetings are planned to begin in April 2019.

The first community meeting for an authorized hearing to review amendments to Planned Development District No. 317, the Cedars, was held in January 2019 and Steering Committee meetings have begun.

General authorized hearing process and timeline

The authorized hearing process begins with authorization at CPC or City Council, followed by the first community meeting, meetings with an appointed Steering Committee to reach consensus regarding a proposal, a second community meeting to present the proposal, consideration at CPC, and finally consideration at City Council. Staff prepares and maintains a section on the Department's webpage for each authorized hearing. Information from each meeting is posted for the community to review and stay current on the authorized hearing's activities and schedule.

Prior to the first community meeting, staff conducts research and field visits. Staff compiles current land uses and certificates of occupancies as well as reviews the current and previous zoning. Staff evaluates the existing conditions and any proposed capital projects to look for similarly situated areas in the City as well as any zoning districts, planned development districts, or best practices that might suit the area. This research takes approximately two months to gather.

Staff then coordinates with the City Council Member and the City Plan Commissioner for the date and time of the community meetings. The community meetings are hosted by the Council Member and Commissioner. Staff sends notices to property owners within the area of request at least 10 days prior to the community meetings. The Council Member's office may send notices to neighborhood associations or other interested parties in the area.

At the first community meeting, the Council Member and/or Commissioner explains the rationale behind the request for the initiation of the case. Staff provides information on the current zoning in the area and the authorized hearing process. The public is provided an opportunity to ask questions of the Council Member, Commissioner, and staff.

A Steering Committee is appointed by the Council Member to work with staff on the proposed zoning. Staff suggests the Steering Committee be comprised of no more than 15 people who are representative of the authorized hearing area. Upon receipt of the list of appointees, staff reaches out to find a day and time for the committee meetings. The committee generally meets every other week for 90 minutes to two hours. The committee meetings are open for the public to attend, but not participate. Public participation occurs at the community meetings and the public hearings. Staff distributes any comments from non-committee members to the committee prior to each meeting.

Steering Committees can complete their proposal in as little as five meetings. Some committees have taken as many as 16 meetings and 10 months to complete their proposal. Staff facilitates the meetings and provides research and suggestions to the committee in the formulation of the proposal. Staff time during the committee phase is spent responding to the committee's vision if there is an adopted plan for the area, and if not, helping formulate that vision through the zoning process. Staff provides research on potential language and standards, including zoning districts that would comply with the committee's vision, crafting conditions if a PD is sought, providing examples of regulations for other parts of the city as well as reviewing best practices in other cities. Staff works with the committee as long as the committee is productive and working towards a proposal.

Once the Steering Committee completes their proposal, a second community meeting is held. This meeting is similar to the first community meeting, except in place of the current zoning presentation, staff provides a comparison between the current zoning and the proposed zoning. The Council Member and Commissioner host the meeting and are also available for questions from the community.

From the first community meeting to City Council consideration, recent authorized hearings have taken between one to two years, with the majority scheduled for City Council in less than 18 months. Delays in the process have occurred because of such things as delay in appointing a Steering Committee after the first community meeting, delay in scheduling a second community meeting after the Steering Committee meetings concluded, additional Steering Committee meetings after the second community meeting and scheduling a third community meeting, the need for additional Steering Committee meetings, and postponement of the case at City Council hearing.

Suggestions for increasing output and prioritization

1) *Add staff as part of the FY19-20 budget*

The workload for the AH/CA staff does not appear to be decreasing in the near future. Suggestions to enable staff to process more authorized hearings includes adding staff to the AH/CA section. The addition of one or two FTEs in the FY19-20 budget would enable staff to process 25% to 50% more authorized hearings than the current workload allows. Depending on the skills and experience of the new planners, some may be assigned solely to authorized hearings and others to Code amendments and other functions of the Section. This would help focus efforts on the authorized hearings without the responsibilities of other assignments. The downside of adding new planners is the possibility of having fewer authorized hearings in the future and having to eliminate the positions.

2) *Restructure Steering Committee meetings*

Currently, staff spends the first few Steering Committee meetings educating the members on the current zoning in the area and what regulations can be considered. Staff also provides visuals of other areas in the City to show the committee how they might pattern parts of their proposal. Staff then discusses the development regulations and works through each regulation with the committee to craft the proposal. Often the committee members are not well versed in zoning and development regulations and the committee phase can get bogged down. By utilizing the Steering Committee member's vision for the area to develop options to review instead of working through the minutiae of each regulation (setbacks, height, landscaping, streetscape, uses, etc.), staff hopes the committee phase could be shortened yet still provide a well-thought out proposal. The composition of each committee is unique and staff needs to gauge how best to facilitate this phase. Some committees may have more zoning knowledge and may be able to provide more hands-on direction without adding more meetings.

3) *Prioritization of authorized hearings*

The current policy has been to assign authorized hearings in the order of initiation. The policy enables staff to manage the workload by researching the areas before the first community meeting. Knowing the order allows management to know what is in the queue and allows for the assignment of an authorized hearing to the appropriate staff based on other responsibilities such as working on an overlay or code amendment.

An alternative to scheduling based on order of initiation would be to create a point system for authorized hearings. The higher the points, the sooner the case would be scheduled. Points could be given to each of the following categories:

- a) Located in a redevelopment area (3 points), a stabilization area (2 points), or an emerging market area (1 point);
- b) Located in a City Council adopted land use study in the past five years (2 points);
- c) Located in a City-affiliated program or study not listed in 1 or 2, such as a TIF, PID, Housing and Neighborhood Revitalization Program (1 point);
- d) Located in an area undergoing rapid change such as demolitions and reconstruction (1 point); and,

- e) Extenuating circumstances, for example where multiple persons were displaced from residences due to a catastrophic event (fire, flood, or storm), beyond the owners control and there is not a reasonably economic way to reestablish the previous use of the property without amending current zoning standards (3 points).

Including details in the memo requesting placement of the authorized hearing item on the agenda regarding the area and intent for initiating would help CPC or the City Council evaluate the necessity of the authorized hearing. The points would be calculated at the time of the initiation by CPC or City Council and placement on the pending list, based on the points, would be provided at the public hearing for authorization. In the case of a tie with an existing authorized hearing, the latest case would be placed on the list after previously initiated hearings. The point system to prioritize the authorized hearings would begin with subsequent hearings.

4) Staff augmentation utilizing third party resources

Hiring an outside firm has been considered as an alternative way to process more authorized hearings. An in-depth, detailed working knowledge of the Dallas Development Code, the application of the Code in the development process, and City policies is essential in processing an authorized hearing. This requirement would likely limit the number of firms who could undertake this task, if any. Facilitation skills are also critically important in working with the Steering Committees.

The unknown length of the process due to additional Steering Committee meetings needed to formulate the proposal or the desire of the Council Member to have an additional community meeting or the postponement of a hearing could be costly in overruns on the budget. A ballpark figure for an outside firm to process one authorized hearing would be \$180,000 on the low end to upwards of \$350,000 depending on size, complexity, and Steering Committee interaction. This is based on the range of time required for previous authorized hearings. This includes research, preparing for meetings, facilitating steering committee and community meetings, preparing documents, and attending public hearings.

If this approach is taken, completing the procurement process, including developing an RFP with clear descriptions of roles and responsibilities and hiring an outside firm, would likely take six months or more. Staff would need to decide which authorized hearing(s) would be assigned to the outside firm to provide specifics in the contract. Staff would need to retain the authority to reject any recommendations crafted by the outside firm that are contrary to City regulations or policies.

Staff time would be redirected from current workload to create the RFP and review the proposals. Staff would also need to collect and furnish data for background research as well as throughout the process, as much of the data is internal data and not readily available to the public. Staff would also have to upload any information to the webpage as the outside firm would not have access to the City's webpage.

Staff oversight would include ensuring transparency throughout the process and reviewing work product for compliance with City regulations and policies. Staff would also need to be a conduit to the City Attorney's Office and staff from other City departments who would need to provide comments and information throughout the process.

Staff would need to ensure notification of the community meetings and public hearings was prepared and mailed in accordance with the Code. Staff would also need to review and submit case reports for CPC and City Council.

The cost and effort for staff to oversee processing of an authorized hearing by an outside firm would still need to be taken into consideration above the contract cost incurred to outsource the project.

Hybrid authorized hearings

Often staff is asked to allow a property owner or business or neighborhood association to pay the zoning application fee and move the authorized hearing to Enterprise-funded zoning staff and be removed from the queue of the authorized hearings. Over time, staff has developed a "hybrid authorized hearing" process to accommodate requests for narrowly defined amendments that are not significant in nature. For existing Planned Development Districts with multiple owners and the initiation is limited to three or less limited regulations, an "applicant" can pay the zoning fee and have the case assigned to a Zoning planner. The Zoning planner conducts at least one community meeting hosted by the City Council Member and Plan Commissioner to explain the current zoning, discuss the regulations limited to possible changes, and explains the next steps. The applicant is provided an opportunity at the community meeting to explain the reason for the proposed changes. Once the applicant informs staff of their proposed changes, staff reviews the changes and makes a recommendation at the CPC and City Council public hearings as staff does in all paid applications.

A hybrid authorized hearing is not permitted for more intensive changes to PDs or for a wholesale change in zoning. These types of changes need more scrutiny and public input through Steering Committee meetings and community meetings. The inclusion of property owners throughout the area to participate on the proposal allows the community to determine the zoning instead of one or two property owners.

There are currently two hybrid authorized hearings underway. One case in District 1 is for limited amendments to Subdistrict 6 within PD No. 830. The other case is an amendment to one regulation in PD No. 305, Cityplace, in Districts 2 and 14 to allow individual zoning applications to be submitted.

Conclusion

The addition of one or two planners and the restructuring of the Steering Committee phase should allow staff to process more authorized hearings in the next fiscal year and reduce the backlog. Developing a ranking system for prioritization of the authorized

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hearings can allow areas in which the City is concentrating efforts to have a comprehensive review.

Should you have any questions please contact Kris Sweckard, Director of the Department of Sustainable Development and Construction, at 214-671-9293.



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Authorized Hearing Process

