

Memorandum



CITY OF DALLAS

DATE April 5, 2019

TO Honorable Members of the Mobility Solutions, Infrastructure and Sustainability Committee

SUBJECT **Zoning Property Owner Notification**

On Monday, April 8, 2019, the Committee will be briefed on zoning property owner notifications. The purpose of this briefing is to receive direction from the committee on a potential code amendment. The briefing material is attached for your review.

Please feel free to contact myself or Kris Sweckard if you have any questions or need additional information.

A handwritten signature in blue ink, appearing to read 'Majed Al-Ghafry'.

Majed Al-Ghafry, P.E.
Assistant City Manager

c: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Chris Caso, City Attorney (Interim)
Carol A. Smith, City Auditor (Interim)
Biliera Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager

Jon Fortune, Assistant City Manager
Joey Zapata, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
M. Elizabeth Reich, Chief Financial Officer
Laila Aleqresh, Chief Innovation Officer
Directors and Assistant Directors

Zoning Property Owner Notification

**Mobility Solutions, Infrastructure,
& Sustainability Committee**

April 8, 2019

**Kris Sweckard, Director
Sustainable Development
and Construction**



City of Dallas

Presentation Overview

- Purpose
- Background
- Possible changes
- Next steps

Purpose

- Brief the Mobility Solutions, Infrastructure, & Sustainability Committee on proposed amendments to the Dallas Development Code regarding property owner notification and responses on zoning applications
- Seek direction from the Committee on possible code amendments

Background

- On February 13, 2019, City Council held a public hearing on Z178-190, a zoning request on Methodist Hospital property
- During the public hearing, an affidavit in opposition was questioned by the applicant
- The husband of the affiant claimed his wife erroneously signed the affidavit thinking it was for a street issue

Background

- Purpose of property owner notification:
 - (i) To allow the staff sufficient time to accurately calculate the land area percentages that determine the voting requirement
 - (ii) To protect the rights of all parties by establishing minimum criteria to assure the reliability of written protests received
 - (iii) To protect the rights of those protesting by establishing procedures and deadlines which are not unduly burdensome or restrictive
 - (iv) To promote order and maintain the integrity of the zoning process

Background

- Chapter 211 of the Local Government Code requires notification of zoning requests
 - If a city has a zoning commission:
 - Before the 10th day before the hearing date, written notification to property owners of real property as indicated on the most recently approved municipal tax roll within 200 feet of the property on which the change is proposed
 - Municipal governing body:
 - Before the 15th day before the hearing date, notice of time and place of the hearing must be published in the official newspaper or newspaper of general circulation in the municipality

Background

- Dallas Development Code requires notification of zoning requests:
 - At least 200 feet from area of request
 - Notification area increases as the area of request increases for General Zoning Change, Specific Use Permits, Conservation Districts, Historic Districts
 - Notification area is 500 feet for Planned Development Districts
 - Notification area is 200 feet for authorized hearing

Background

- Notification and Reply Forms:
 - Staff mails a notification letter and reply form to each property owner listed on the last approved tax role within the designated notification area
 - The reply form contains aspects required by State law for a protest
 - The reply form has a box to check support or opposition as well as provide comments
 - The signature on an original reply form sent by the City does not have to be notarized

Background

- Affidavits:
 - Staff developed a generic affidavit in support and an affidavit in opposition
 - The generic affidavit includes all items required by State law and the Development Code
 - Description of the zoning case (can be the Z number)
 - Names of all persons protesting the proposed change
 - Description of the area of lots or land owned by the protesting parties – either within the area covered by the change or within 200 feet of the area of request
 - Mailing addresses of all persons signing the protest
 - Date and time of the execution of the affidavit
 - A property owner may provide a protest on a different form provided it contains the above information
 - An affidavit or other form of protest (not the original reply form) must be notarized

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Background

- Deadlines:
 - Per the Code, staff sends written notice not less than 10 days before the public hearing at City Plan Commission (CPC) and City Council
 - Original reply forms or affidavits must be returned before noon the working day immediately preceding the public hearing at CPC or Council
 - Withdrawals of response must be filed in writing and before the filing deadline

Background

- Reply Forms and affidavits:
 - Staff tabulates the completed reply forms and affidavits indicating those in support and those in opposition at CPC and Council
 - Staff generates a map and a list showing the opposition and support
 - For City Council public hearing, staff determines if a zoning request has garnered more than 20% opposition
 - If multiple forms or withdrawals are filed on behalf of the same owner, the instrument with the latest date and time of execution controls

Background

- 20% opposition:
 - 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

Background

- Who must sign a reply form or affidavit:
 - Owner of the property
 - Majority of owners if owned by two or more persons
 - Except in the case of community property, presumption is that written protest of one spouse to be to protest of both
 - Person authorized by power of attorney for the owner or majority of owners
 - Corporation – president, vice-president, or attorney in fact
 - General or limited partnership – general partner or attorney in fact
 - Condominium – governing body with authority by bylaws
 - Individual condo owner must provide legal documents clearly establishing rights of individual owner to act

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Background

- Presumption of validity:
 - City presumes the signatures are authentic and the persons or officers signing are the property owner or have authority to sign on behalf of the owner(s)
 - Multiple ownership – the city presumes a properly signed form represents the majority of owners
 - Presumptions are rebuttable
 - City attorney may advise City Council that a presumption should not be followed in a specific case based on extrinsic evidence presented

Possible changes

- Notices and reply forms:
 - Mail notices not less than 15 days before the City Council public hearing
 - Require reply forms and affidavits to be returned before noon on the Friday preceding the public hearing

Possible changes

- Pros:
 - Property owners are notified sooner regarding the public hearing
 - Mayor and Council Members would receive tabulations of the responses on Monday prior to the public hearing instead of the evening before the hearing
 - Applicant and neighbors would know earlier in the process if there was 20% opposition

Possible changes

- Cons:
 - Mailing notices for Council would coincide with mailing notices for City Plan Commission, which may result in large numbers of notices for staff to coordinate and the mail room to process
 - May be perceived as having less time for the neighborhood and applicant to gather replies in support or opposition

Next Steps

- If changes are requested by the Committee the next steps are:
 - ZOAC recommendation
 - CPC recommendation
 - MSIS Committee briefing
 - City Council consideration

Zoning Property Owner Notification

**Mobility Solutions, Infrastructure,
& Sustainability Committee**

April 8, 2019

**Kris Sweckard, Director
Sustainable Development
and Construction**



City of Dallas

Appendix – CPC & Council Reply Forms

CITY PLAN COMMISSION HEARING DATE October 4th, 2018	REPLY FORM	CASE NO.: Z178-260 (SM)
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This notice has been sent to you because your property (or properties) is in or near the area of a proposed zoning change. As a property owner, you can support or oppose this request. To be counted, this form must be received before noon on the business day before the City Plan Commission hearing date.

Only the original of this reply form or a written reply that complies with Dallas Development Code Section 51A-4.701 may be used. Faxes or photocopies of this reply form will not be accepted.

City of Dallas Z178-260 Sustainable Dev & Construction 1500 Marilla St, 5BN Dallas, TX 75201	For information contact Sarah May at (214) 671-9404 or sarah.may@dallascityhall.com. Si desea información en español, favor de llamar a Liliana Lopez al teléfono (214) 670-4209.
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STEP 1 I am authorized to sign this form because I am... (Check only one box.)

Individual <input type="checkbox"/> Property owner <input type="checkbox"/> Authorized by a power of attorney <input type="checkbox"/> Representing a majority of property owners	Business/Organization <input type="checkbox"/> President/Vice President <input type="checkbox"/> General Partner <input type="checkbox"/> Attorney in fact	Condominium <input type="checkbox"/> Governing body* <input type="checkbox"/> Individual owner **
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* I am authorized to sign by the governing body of the condominium in accordance with its bylaws.
 ** A condominium unit owner must enclose a copy of the legal document that gives the individual owner the right to act separately from the governing body.

STEP 2 List the street address(es) of your property if different than the address on the label above. (Do not list a P.O. Box.) If you own multiple properties under different appraisal district account names, you may receive multiple forms; please return all of the forms.

Street Address(es): _____

STEP 3 Indicate your support or opposition to the proposed zoning change request:

Support
 Opposed

Comments: _____

STEP 4 **Sign below.** For this form to be valid, the date and time you signed must be provided. Fold the form as indicated on the reverse side and return it by mail or hand delivery. To be counted, this form must be received before noon on the business day before the City Plan Commission hearing date.

Signature (and Title if applicable) _____	Signature (and Title if applicable) _____
Date and Time (both must be provided) _____	Date and Time (both must be provided) _____

It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code § 37.10) Revised: December 2008

CITY COUNCIL HEARING DATE February 27th, 2019	REPLY FORM	CASE NO.: Z178-260 (SM)
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This notice has been sent to you because your property (or properties) is in or near the area of a proposed zoning change. As a property owner, you can support or oppose this request. To be counted, this form must be received before noon on the business day before the City Council hearing date.

Only the original of this reply form or a written reply that complies with Dallas Development Code Section 51A-4.701 may be used. Faxes or photocopies of this reply form will not be accepted.

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