

Memorandum



CITY OF DALLAS

DATE June 9, 2023

TO Honorable Mayor and Members of the City Council

SUBJECT **Development Code amendment to address the two-year limitation applicability, standards to grant a waiver, and related regulations – DCA212-007**

Summary

On Tuesday, June 6, 2023 the Economic Development Committee was briefed on **DCA212-007**, a Development Code amendment to address the two-year waiting period required between a final decision of either **approval or denial** of a zoning change or specific use permit (SUP) and any subsequent application for a zoning change or SUP on that same property.

Background

On May 11, 2022, the City Plan Commission (CPC) authorized a public hearing to consider an amendment to Dallas Development Code, Section 51A-4.701(d), “Two year limitation”, to assess the applicability of the two-year limitation, the standard for the waiver of two-year limitation, and related regulations. The Zoning Ordinance Advisory Committee (ZOAC) met three (3) times between November 2022 and January 2023 to review this item and forwarded its recommendation to the City Plan Commission (CPC), which met and made a recommendation on March 2, 2023.

Issue

For the CPC to grant a waiver to the waiting period, the Development Code requires a finding of, “changed circumstances to the property sufficient to warrant a new hearing.” Based on this language, staff and CPC have often had conflicting conclusions. Staff has historically interpreted this to mean that physical changes to the property must occur to warrant a new hearing. The CPC often found intrinsic evidence to suggest that changes had occurred since the previous final decision, and almost always granted the waiver. Therefore, the CPC authorized a code amendment to resolve the conflict between staff and CPC interpretations and to reconsider the narrow circumstances that warrant a waiver to the two-year waiting period.

Although it was not an original component of the CPC’s rationale for initiating the code amendment, it is important to note that the current two-year waiting period applies equally to both previously approved and denied zoning and SUP cases, which arose as an issue during the CPC’s review and discussion. The only exceptions are for final decisions of denial without prejudice and when an SUP was approved for a period of two (2) years or less.

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Staff researched requests for two-year waivers that were filed from 2018 to 2022 and found that of 13 waiver requests, eight (8) were submitted after a final decision of approval and five (5) were submitted after a final decision of denial. **All** waiver applications that were submitted after a final decision of **approval** by the CPC were **granted a waiver**. For waiver requests submitted after a decision of denial, four (4) out of five (5) were granted.

Staff also analyzed the applicable regulations from 15 comparison cities and found that 13 out of the 15 (Austin, Baltimore, Boston, Buffalo, Columbus, Fort Worth, Houston, Minneapolis, Philadelphia, San Antonio, San Diego, San Francisco, and San Jose) do **not** require a waiting period after a final decision of approval. Two (2) of the comparison cities have a similar requirement to Dallas: Atlanta requires a two-year waiting period for properties with a final decision of approval or denial, while El Paso requires a waiting period of just one-year for properties with a final decision of approval or denial.

CPC and Staff Recommendations

After much discussion about waiver review criteria and whether to include or exempt previously approved cases from the two-year waiting period, the CPC ultimately recommended a minor change to the existing regulations. Specifically, the CPC recommended an amendment limited to additional language to expand the circumstances to grant a waiver but recommended **no change** to requiring a waiver for properties with previous final decisions of either **approval or denial** to be subject to the two-year waiting period before a subsequent application can be made.

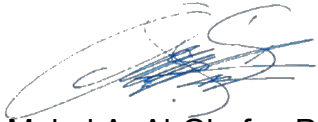
Alternatively, based on the CPC's pattern of waiver approvals, analysis of codes from surrounding and comparable jurisdictions, and the City's goal to remove barriers to certain development processes, staff recommends **eliminating approvals** from the two-year waiting period. The current two-year waiting period between an approved zoning or SUP application on a property creates an inefficient process and additional time constraints. Exempting previously approved cases from the two-year waiver process does not exempt these applications from additional public review. All zoning and SUP cases are still required to follow the CPC and the City Council public hearing process. Staff's recommendation would simply remove an extra step to streamline the development process, especially in areas where the community is expecting development to occur. Staff's recommended amendments are intended to align Dallas more closely with other area cities and further the City's goal to undergo regulatory review to remove barriers to growth and development.

A table comparing the current requirements, CPC's recommendation, and staff's recommendations to summarize the impacts on development and processes is provided on the following page. Additionally, the case report is attached to this memorandum.

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	Denied (with prejudice)	Denied without prejudice	Approved
Current Regulations	Must wait 2 years to reapply for zoning or SUP	No waiting period to reapply for zoning or SUP	Must wait 2 years to reapply for zoning or SUP
CPC recommendation (no change)	Must wait 2 years to reapply for zoning or SUP	No waiting period to reapply for zoning or SUP	Must wait 2 years to reapply for zoning or SUP
Staff recommendation (see <u>underline</u>)	Must wait 2 years to reapply for zoning or SUP	No waiting period to reapply for zoning or SUP	<u>No waiting period to reapply for zoning or SUP</u>

Please contact Julia Ryan, Director of Planning and Urban Design, at (972) 894-1648 or julia.ryan@dallas.gov if you have any questions or concerns.



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

[Attachment: DCA212-007 Case Report]

- c: T.C. Broadnax, City Manager
- Tammy Palomino, Interim City Attorney
- Mark Swann, City Auditor
- Biliera Johnson, City Secretary
- Preston Robinson, Administrative Judge
- Kimberly Bazor Tolbert, Deputy City Manager
- Jon Fortune, Deputy City Manager
- M. Elizabeth (Liz) Cedillo-Pereira, Assistant City Manager
- Dr. Robert Perez, Assistant City Manager
- Carl Simpson, Assistant City Manager
- Jack Ireland, Chief Financial Officer
- Genesis D. Gavino, Chief of Staff to the City Manager
- Directors and Assistant Directors

FILE NUMBER: DCA212-007(LL) **DATE INITIATED:** Fall 2022

TOPIC: Development Code Amendment to consider amendments to the two-year limitation applicability, standards to grant a waiver, and related regulations

COUNCIL DISTRICT: All **CENSUS TRACTS:** All

REQUEST: Consideration of amending Chapter 51A of the Dallas Development Code, Section 51A-4.701(d), "Two year limitation," to revise the applicability of the two-year limitation, standards to grant a waiver, and related regulations.

SUMMARY: The proposed code amendments modify the two-year limitation between a final decision of approval or denial of an application for a change in zoning or boundary line adjustment and a subsequent request and the standards to be considered to grant a waiver. These modifications are intended to align Dallas more closely with other area cities and further the City's goal to undergo regulatory review to remove barriers to growth and development.

CPC RECOMMENDATION: Approval of City Plan Commission's recommendations.

STAFF RECOMMENDATION: Approval of staff's recommendations.

CODE AMENDMENT WEBPAGE:
<https://dallascityhall.com/departments/pnv/Pages/Code-Amendments.aspx>

BACKGROUND INFORMATION:

- On May 11, 2022, City Plan Commission (CPC) approved the request of Chair Joanna Hampton, Vice Chair Brent Rubin, and Commissioner Michael Jung to initiate a public hearing to consider a code amendment of the Dallas Development Code, Section 51A-4.701(d), “Two year limitation,” to revise the applicability of the two-year limitation, the standard for the waiver of two-year limitation, and related regulations.
- On November 15, 2022 and January 17, 2023, staff presented recommendations for two-year limitations to ZOAC. At the meeting, ZOAC asked staff to consider additional items to be considered to grant a waiver.
- On January 31, 2023, ZOAC motioned to move the item forward to CPC with an alternate recommendation to staff’s recommendations.
- On March 2, 2023, CPC motioned to move the item forward to City Council with an alternate recommendation to staff’s recommendations.

STAFF ANALYSIS:

CPC initiated the code amendment to review the current two-year waiting period required between a final decision of approval or denial of an application for a change in zoning or boundary line adjustment and a subsequent application for a change in zoning or boundary line adjustment. A two-year waiting period is not required for minor amendments to site, landscape, or development plans and original development plans. However, any change to an approved site, landscape, or development plan that does not qualify for a minor amendment would be subject to the two-year waiting period.

The current two-year waiting period between an approved zoning or specific use permit (SUP) application on a property creates challenges because relief from the waiting period is only granted with a waiver from CPC. The CPC waiver process adds at least a month to a minimum two public hearings by CPC and Council that are already required for a zoning change, including an SUP and a boundary adjustment.

To grant a waiver under the existing parameters, the commission must consider what is meant by “changed circumstances regarding the property sufficient to warrant a new hearing”. The meaning of this phrase has historically been interpreted in a variety of ways ranging from physical changes to the land or existing structures which have been altered outside the property owner’s control (e.g. tornado, fire damage, flooding, etc.) to changes that are not physically discernable such as a change in interpretation, property

owner, or market conditions. These differing interpretations have complicated the waiver process and therefore warrants review.

Analyses of Previous Two-Year Waiver Requests

Most waiver applications are made so that a subsequent application and public hearings could occur to adjust for changes in market conditions, correct inconsistencies in the preceding zoning or SUP ordinance, or because an SUP was granted within two years on the same property, often for an unrelated use to the new application requiring a waiver.

Staff researched two-year waivers that were filed from 2018 to 2022 and found five out of 13 waivers that were submitted as a result of final decisions of denial (with prejudice). Of the 13 waiver applications that were submitted, 12 (92.3%) waivers were approved. Of those five waiver applications, two were granted approval by CPC within one month of filing and two were denied within one month of filing the application. Of those two denied by CPC, one was ultimately granted (overturned) upon an appeal to City Council within six months of filing the application. One waiver application was granted within two months of filing the application.

Exempting Approvals from the Two-Year Waiting Period

CPC recommends no change to the waiting period for approvals whereas staff recommends an exemption for approvals for an SUP or for a change in zoning district classification or boundary from the two-year limitation. Staff's recommendation to exempt approvals from a waiting period will have at least four significant impacts as described below:

1. Exempting approvals from the waiting period would eliminate 61.5%, or eight out of 13 waiver applications, based on the waivers submitted between 2018 and 2022 – significantly reducing the number of waiver applications. This reduction in the number of waiver applications submitted will save time for staff and the commission.
2. Exempting approvals from the waiting period will save time for the property owner because the waiver process adds a minimum of one month in addition to the zoning change process which could take an additional three to six months when there is no backlog of cases. This additional time to go through a waiver process could negatively impact further development of a property. Staff's recommendation supports the goal to undergo regulatory review to remove barriers to growth and development, particularly in areas that are experiencing accelerated economic growth and vitality or a resurgence of growth and development. It also directly correlates to the Economic Development Policy (EDP) to analyze and improve development review processes to encourage predictability in order to meet the larger goal of leveraging a diverse range

of commercial and industrial development opportunities in all areas of the city to meet 10-year demand for business growth.

3. Exempting approvals from the waiting period would align with 13 out of 15 cities compared. The comparison shows that only Atlanta and El Paso require approvals to have a waiting period. Austin, Baltimore, Boston, Buffalo, Columbus, Fort Worth, Houston, Minneapolis, Philadelphia, San Antonio, San Diego, San Francisco, and San Jose do not require approvals to have any waiting period. Eliminating the waiting period for approvals would help to make Dallas competitive and ultimately better positioned for more development opportunities in a competitive climate.
4. Exempting approvals from a waiting period will realign previous decisions for approval with previous decisions for denial without prejudice instead of the current requirement which requires previous decisions for approval to wait like previous final decisions of denial (with prejudice). In rare circumstances when portions of a previous request that were not included in the previous approval are resubmitted within two years of the previous final decision, CPC and Council still retain the option to work with the applicant to find consensus, deny the subsequent request without prejudice, or deny the subsequent request with prejudice and impose a two-year waiting period before another subsequent request can be made. This concern for this rare circumstance should not outweigh the consequences of requiring all previous decisions of approval to get a waiver.

Ultimately, staff has found insufficient reasons to maintain a two-year waiting period for approvals alongside denials (with prejudice). Therefore, staff recommends that properties that were granted a specific use permit or approved for a change in zoning district classification or boundary should not be required to wait two years before making a subsequent request.

Additional Standards

Regarding CPC's recommendation to amend, "The commission may waive the two-year limitation if there is good cause [~~are changed circumstances regarding the property~~] sufficient to warrant a new hearing", staff cannot support replacing "changed circumstances" with "good cause". Since the meaning of "good cause" is unclear as to what it means, it is expected to lead to more confusion.

Staff does support allowing the applicant to justify or make the case for the request on a case by-case basis. Therefore, staff recommends the criteria to read, "The commission may waive the two-year limitation if there are changed circumstances [~~regarding the property~~] sufficient to warrant a new hearing" because removing "regarding the property" will help to resolve confusion and conflicting interpretations by staff and CPC. Historically,

“regarding the property” has often been interpreted to mean physical changes to the property (e.g., tornado, fire, flood) in lieu of nonphysical changes concerning the property sufficient to warrant a new hearing (e.g., changes in market conditions, correct inconsistencies in the preceding zoning or SUP ordinance, or because an SUP was granted within two years on the same property, often for an unrelated use to the new application requiring a waiver).

Refining Terminology:

The remaining proposed amendments include many changes that simply refine the existing interpretation. For example, the word “subsequent” is proposed to replace “further”. Although no significant changes in interpretation were discovered with this proposed change, staff believes “subsequent” is a more refined and appropriate word in this context and was seen in some comparison cities. The remainder of the changes proposed are considered improvements to the existing requirements but are not significant changes to current practices and interpretations.

Summary of Staff Recommendations

Staff recommends removing the two-year limitation for approvals of a change in zoning district classification or boundary, which includes decisions to grant SUPs. Exempting approvals from the two-year waiting period will significantly reduce the number of two-year waiver applications presented to CPC and it is expected to have a direct impact on development and economic growth; particularly in areas that are experiencing accelerated economic growth and vitality or a resurgence of growth and development. Staff’s recommended amendments will also align Dallas more closely with other area cities. Additionally, staff believes that staff’s recommended standards to grant a waiver provide more clarity and direction and allows the applicant to provide the justification for the waiver on a case-by-case basis.

CPC/Staff Recommended Amendments to §51A-4.701. Zoning Amendments

Note: ~~Strikeouts~~ are words being removed. Underlined words are words being added.

(d) Two-year [~~Two-year~~] limitation.

CPC Recommendation:

(1) Except as provided in Subsections (d)(2) and (d)(3), after a final decision is reached by the commission or city council either granting or denying a request for a change in a zoning district classification or boundary, no subsequent [~~further~~] applications may be considered for that property for two years from the date of the final decision.

(2) If the commission or the city council renders a final decision of denial without prejudice, or if the city council grants a specific use permit and imposes a time limit of two years or less, the two-year [~~two-year~~] limitation is waived.

Staff Recommendation:

(1) Except as provided in Subsections (d)(2) and (d)(3), after a final decision is reached by the commission or city council [~~either granting or~~] denying a request for a change in a zoning district classification or boundary, no subsequent [~~further~~] applications may be considered for that property for two years from the date of the final decision.

(2) If the commission or the city council renders a final decision of denial without prejudice, [~~or if the city council grants a specific use permit and imposes a time limit of two years or less,~~] the two-year [~~two-year~~] limitation is waived.

(3) A property owner may apply for a waiver of the two-year [~~two-year~~] limitation in the following manner:

(A) The applicant shall submit the [~~his~~] request in writing to the director. The director shall inform the applicant of the date on which the commission shall consider the [~~his~~] request and shall advise the applicant of the [~~his~~] right to appear before the commission.

CPC Recommendation:

(B) The commission may waive the two-year limitation if there is good cause [~~are changed circumstances regarding the property~~] sufficient to warrant a new hearing.

Staff Recommendation:

(B) The commission may waive the two-year limitation if there are changed circumstances [~~regarding the property~~] sufficient to warrant a new hearing.

(C) A simple majority vote by the commission is required to grant the request. If a waiver [~~rehearing~~] is granted, the applicant shall follow the procedure for a[n] zoning amendment per [~~to~~] this article or a request for a change in a zoning district classification or boundary.

(D)~~(C)~~ If the commission denies the request, the applicant may appeal in writing to the city council by filing an appeal with the director.

MARCH 2, 2023 – DRAFT CITY PLAN COMMISSION MINUTES

23-697 DCA212-007(LL)

Planner: Lori Levy

Motion: It was moved to recommend **approval** of amending Chapter 51A of the Dallas Development Code, Section 51A-4.701(d), “Two year limitation” to revise the applicability of the two-year limitation, the standard for the waiver of two-year limitation, and related regulations, subject to Zoning Ordinance Advisory Committee proposed amendments and to follow staff’s recommendations regarding Subsections (3)(B) with change to read as follows: “The commission may waive the two-year limitation if there ~~are changed circumstances~~ **is good cause** sufficient to warrant a new hearing.”

Maker: Hampton
Second: Blair
Result: Carried: 13 to 0

For: 13 - Hampton, Herbert, Anderson, Shidid,
Carpenter, Wheeler-Reagan, Blair, Jung,
Housewright, Treadway, Stanard, Kingston,
Rubin

Against: 0
Absent: 2 - Popken, Haqq
Vacancy: 0

Friendly Amendment I: It was moved to **amend** the motion to follow staff’s recommendations regarding Subsections (d)(1) and (d)(2): to change waivers only required after the denial with prejudice; no longer after the approval.

Maker: Rubin
Second: Shidid
Result: Failed: 5 to 8

For: 5 - Shidid, Carpenter, Wheeler-Reagan, Treadway,
Rubin

Against: 8 - Hampton, Herbert, Anderson, Blair, Jung,
Housewright, Stanard, Kingston
Absent: 2 - Popken, Haqq
Vacancy: 0

Friendly Amendment II: It was moved to **amend** the motion to follow staff’s recommendations regarding Subsections (3)(B): “The commission may waive the two-year limitation if there ~~are changed circumstances~~ **is good cause** sufficient to warrant a new hearing.”

Note: Vice-Chair Rubin offered an amendment to Commissioner Kingston's Friendly Amendment II: to change "The commission may waive the two-year limitation if there are changed circumstances sufficient to warrant a new hearing." to "The commission may waive the two-year limitation if there is good cause sufficient to warrant a new hearing." Commissioner Kingston accepted the amendment.

Maker: Kingston
Second: Rubin
Result: Carried: 10 to 3

For: 10 - Herbert, Anderson, Shidid, Carpenter, Wheeler-Reagan, Blair, Housewright, Treadway, Kingston, Rubin

Against: 3 - Hampton, Jung, Stanard
Absent: 2 - Popken, Haqq
Vacancy: 0

Friendly Amendment III: It was moved to **amend** the motion to follow staff's recommendations regarding Subsections (d)(2): to add language with the intent the waiver not required for City initiated zoning amendments (authorized hearings).

Maker: Rubin
Second: Shidid
Result: Failed: 5 to 8

For: 5 - Anderson, Shidid, Wheeler-Reagan, Treadway, Rubin

Against: 8 - Hampton, Herbert, Carpenter, Blair, Jung, Housewright, Stanard, Kingston
Absent: 2 - Popken, Haqq
Vacancy: 0

Speakers: None