

ORDINANCE NO. 1012-2022B

AN ORDINANCE OF THE CITY OF DICKINSON, TEXAS, AMENDING SECTIONS 18-20 AND 18-24 OF ARTICLE III "ADMINISTRATION AND PROCEDURES" OF CHAPTER 18 "ZONING" OF THE CITY OF DICKINSON CODE OF ORDINANCES, BY INCREASING THE MANDATORY NOTICE REQUIREMENTS FOR PUBLIC HEARINGS BEFORE THE ZONING BOARD OF ADJUSTMENT, THE PLANNING AND ZONING COMMISSION, AND THE CITY COUNCIL; PROVIDING A PENALTY; PROVIDING A REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND, PROVIDING AN EFFECTIVE DATE.

* * * * *

WHEREAS, the City of Dickinson, Texas (the "City") is a home-rule municipality pursuant to section 5 article 11 of the Texas Constitution and as such, is vested with the power of local self-government; and

WHEREAS, Section 54.004 of the Texas Local Government Code authorizes home-rule municipalities to enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants;

WHEREAS, Chapter 211 of the Texas Local Government Code authorizes the City to enforce zoning regulations and procedures on property and property owners within the City's boundaries;

WHEREAS, the City's Code of Ordinances in Sections 18-20 and 18-24 of Article III of Chapter 18, provides the minimum notice requirements that the City has to meet in order to conduct a public hearing before the Zoning Board of Adjustment, the Planning and Zoning Commission, or the City Council (the "Notice Requirements"); and

WHEREAS, the citizens of the City and City staff have recommended that the Notice Requirements be expanded so that notice of a public hearing related to a zoning issue is provided earlier to affected property owners and that such notice is provided to more property owners; and

WHEREAS, it is the desire of the City Council (the "Council") of the City to expand the Notice Requirements as suggested by City Staff and the Planning and Zoning Commission's recommendation which is attached to this Resolution as "Exhibit A"; and **NOW THEREFORE**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DICKINSON, TEXAS:

SECTION 1. THAT the facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct and are incorporated into this Ordinance for all intents and purposes.

SECTION 2. THAT section 18-20 of the Code of Ordinances, City of Dickinson, Texas, is hereby amended to read as follows (with a red-lined version of the changes being included in "Exhibit B" to this Ordinance):

be invalid or unconstitutional; and the City Council of the City, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 5. THAT any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed two thousand dollars (\$2,000), with each day of violation constituting a separate offense.

SECTION 6. THAT all ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

SECTION 7. THAT this Ordinance shall become effective on January 1, 2023 upon final reading and adoption of this Ordinance when the caption hereof is caused to be published in the official newspaper of the City, by the City Secretary, as required by law.

PASSED, APPROVED, AND ADOPTED on first reading on 11TH DAY OF OCTOBER, 2022.

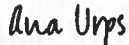
PASSED, APPROVED, AND ADOPTED on second reading on 8TH DAY OF NOVEMBER, 2022.

FOR THE CITY OF DICKINSON:

ATTEST:



SEAN SKIPWORTH, MAYOR



Ana Urps, City Secretary

AS TO FORM:



Justin Pruitt, City Attorney



City of Dickinson
Community Development

Planning & Zoning Commission
Code of Ordinances Amendment
September 20, 2022

Commission Report

Application No.: 20220851

Request: City staff is proposing an amendment to **Chapter 18-20 "Property owner notification" and 18-24 "City council hearing and action"** of the Code of Ordinances, (i) to increase the mailing distance requirement, (ii) to remove the certified mail requirement, (iii) to add the required publication requirement, and (iv) to change the responsibility of notices from the applicant to city staff.

Applicant: Theo Melancon, City Manager

Subject Property: CITY WIDE

Background:

The purpose of a public hearing is to give everyone the opportunity to express their views and to provide evidence in support of those views regarding a petition before City boards, commissions, and council. Public meetings are governed by the procedures of the Open Public Meetings Act, and generally occur whenever a quorum of a governing body meets together and deals with the business of that body. A public hearing is intended to obtain public testimony or comment before significant decisions are made. The public hearing notifications are to ensure surrounding property owners aware of the public hearing and are given the opportunity to speak.

City staff is proposing the following changes the public hearing notice requirements:

(i) to increase the mailing distance requirement.

More of the surrounding property owners would be notified by increasing the distance requirement for public hearing notices. Proposed commercial uses affect more of the surrounding properties. City staff recommends:

- extending the written notice to surrounding property owners from two hundred (200) feet to five hundred (500) feet for applications proposed in DOS, RR, CR, MH, or SR zoning districts.
- extending the written notice to surrounding property owners from two hundred (200) feet to one thousand (1,000) feet for applications proposed in HR, NC, IC, GC, LI, GI, or PD zoning districts.

(ii) to remove the certified mail requirement.

Many of the letters sent are returned due to owners' ability or desire to sign for certified mail sent from the city. Sending public hearing notices to surrounding property owners using

(3) **The zoning and use of nearby properties, and the extent to which the proposed zoning and use would be compatible.**

Public hearing requirements will not have an effect on zoning and use of nearby properties, and the extent to which the proposed zoning and use would be compatible. Although, it could bring added awareness to proposed changes allowing for additional public testimony or comment before significant decisions are made.

Planning and Zoning Commission Update: The Commission expressed concerns that the main purpose of notifications for rezoning is to notify surrounding residential property owners. The Commission proposes a greater distance proposed for residential properties than what staff has recommended.

(4) **The suitability of the property for the uses permitted by right in the proposed zoning district.**

Public hearing requirements will not have an effect on the suitability of the property for the uses permitted by right in the proposed zoning district. While it could bring added awareness to proposed changes allowing for additional public involvement. The public hearing notifications are to ensure surrounding property owners aware of the public hearing and are given the opportunity to speak.

(5) **The extent to which approval of the application would detrimentally affect nearby properties.**

The public hearing notifications are to ensure surrounding property owners aware of the public hearing and are given the opportunity to speak. Increasing the number of surrounding property owners receiving public notice would allow a greater level of participation and input concerning the possible effect a proposal may have on nearby properties.

Commercial developments are likely to affect more of the surrounding properties increasing the need for additional owners to be notified of these proposed changes.

Planning and Zoning Commission Update: The Commission expressed concerns that changes occurring that have made citizen unhappy that were not notified because their property is 201 feet away and not noticed.

(6) **The extent to which the proposed use would affect the capacity or safety of that portion of the street network, other public facilities or utilities, or present parking problems in the vicinity of the property.**

The extent to which the proposed use would affect the capacity or safety of that portion of the street network, other public facilities or utilities, or present parking problems in the vicinity is considered when making a decision during public proceedings. Public testimony or comment before significant decisions are made will assist city boards, commissions, and council in making more informed decisions.

Staff Update:

In response to Planning and Zoning Commission concerns, staff performed additional research on the notification requirements in the following cities: Alvin, Baytown, Clear Lake Shores, Deer Park, Friendswood, Galveston, Kemah, La Marque, La Porte, League City, Missouri City, Mont Belvieu, Nassau Bay, Pasadena, Pearland, Richmond, Santa Fe, Seabrook, Stafford, Sugarland, Tomball, Texas City, and Webster. Staff discovered that out of the 23 surrounding communities, only two (2) of those have a requirement more stringent than the state requirement to provide written notice to surrounding property owners within two hundred 200 feet. Baytown and Mont Belvieu extended the written notice requirement to three hundred (300) feet. However, Seabrook code states, "Written notice of public hearings before the planning and zoning commission ... shall be sent to owners of real property lying within 200 feet, (and the city will endeavor to provide notice to owners of real property lying within 500 feet of the property...". Seabrook Chief Building Official confirmed public hearing notices are sent to property owners within 500 feet of the property for zoning applications.

Staff reviewed 2022 zoning applications considered by Board of Adjustment, Planning and Zoning Commission, and City Council:

Board of Adjustment considered one (1) special exception application to move nonconforming residential structure.

Board of Adjustment considered eleven (11) variance applications (some of these applications include multiple variance requests):

- 11 residential properties
 - 9 – setback
 - 1 – height
 - 1 – lot size
- 1 Commercial property– WCID setbacks

Planning and Zoning Commission and City Council considered six (6) zoning map changes:

- 5 commercial properties (3 PD)
- 1 residential property

Planning and Zoning Commission and City Council considered four (4) Special Use Permits:

- 3 Commercial properties
 - 2 – Churches
 - 1 – Bar, Game room, Event center
- 1 Residential property – Vacation Rental

Figure B

Surrounding Property Owner Notifications

ADDRESS	Current Notices	CERTIFIED	CURRENT COST	Proposed Notices	STANDARD	PROPOSED COST	COST DIFFERENCE
Ave J	9	8	70	43	1	25	(46)
23rd St	25	8	196	229	1	131	(65)
Starboard	12	8	94	66	1	38	(56)
Scenic	14	8	109	82	1	47	(63)
Old Bayou	11	8	86	132	1	75	(11)
FATTA	13	\$7.82	\$101.66	212	\$0.57	\$120.84	\$19.18
PARKVIEW	53	\$7.82	\$414.46	325	\$0.57	\$185.25	(\$229.21)
HUGHES	45	\$7.82	\$351.90	245	\$0.57	\$139.65	(\$212.25)
FALCO 2320	16	\$7.82	\$125.12	225	\$0.57	\$128.25	\$3.13
FALCO UNADDRESS	15	\$7.82	\$117.30	225	\$0.57	\$128.25	\$10.95
TOTAL	213		1665.66	1784		1016.88	-659.73
TOTAL RESIDENTIAL	71		555	552		315	(241)
TOTAL COMMERCIAL	142		1,110	1,232		702	(408)

Staff Updated Recommendation:

Staff recommends **Approval** for an amendment to **Chapter 18-20 "Property owner notification" and 18-24 "City council hearing and action"** of the Code of Ordinances, **(i) to increase the mailing distance requirement, (ii) to remove the certified mail requirement, (iii) to add the required publication requirement, and (iv) to change the responsibility of notices from the applicant to city staff** as recommended by Planning & Zoning Commission with the following modification:

- (i) to increase the mailing distance requirement,
 - extending the written notice to surrounding property owners from two hundred (200) feet to five hundred (500) feet.

The current recommendation to require written notice to surrounding property owners within five hundred (500) feet is more than the requirements of any surrounding city code reviewed by staff. Figure C below shows the previous analysis recalculated to show Staff's updated recommendation to require five hundred (500) foot notice. When you compare with the current number of notices sent to surrounding property owners, you can see the number of notices proposed would result in over three (3) times the number of notices sent.

While this is a substantial increase in the number of notices being sent to surrounding property owners, the additional workload should be manageable by staff.

Sec. 18-20. - ~~Property owner notification~~Public hearing notice requirements.

Public notice of hearings held before the commission or board of adjustment ~~shall be given at least 11 days before the public hearing,~~ unless otherwise required by law,

~~Public notice of hearings held before the council shall be given at least 16 days before the public hearing, unless otherwise required by law.~~

Public notice shall be given as follows:

(1) ~~Mailing. Before the 10th day before the date of the public hearing, w~~Written notice of the time and place of a public hearing ~~for a change in district boundary~~ shall be sent by the applicant to each owner, as indicated by the most recently approved municipal tax roll, of real property ~~within two hundred (200) feet of the property on which a change in classification is proposed.~~ The mailed notice shall be ~~given by certified mail, return receipt requested, and shall be in~~ letter form stating the time and place of the hearing, a general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing. When notice has been properly addressed and mailed ~~by the applicant,~~ failure to receive mailed notice shall not invalidate any action taken on the application. ~~Prior to the public hearing, the applicant shall file with the zoning official the returned receipts from the certified mailings and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.~~ Written notice shall be sent to all property owners within seven hundred and fifty (750) feet of the property.

(2) ~~Posting of signs.~~ Notice of required public hearings on landowner applications ~~for a zoning reclassification, a specific use permit, or a variance~~ shall also be provided by way of a sign posted ~~at least ten (10) days before the date of the public hearing~~ on the land that is the subject of the application. One sign shall be posted by the applicant for each two hundred (200) feet of frontage along a public street, with a maximum of three (3) signs required per frontage. Signs shall be located so that the lettering is visible from the street. Where land does not have frontage on a public street, signs shall be posted on the nearest public street ~~with a notation indicating the location of the land subject to the application.~~ The sign shall be furnished by the city to the applicant, and the applicant shall maintain the sign ~~for a least ten (10) days immediately~~ preceding the date of the public hearing. The applicant shall file an affidavit ~~with photos,~~ on a form provided by the city, with the zoning official ~~at the time of prior to~~ the public hearing verifying that the sign was posted as required by this section. ~~The provisions of this paragraph shall not apply to any application initiated by the commission or the city council.~~

(3) ~~Publication.~~ Notice of required public hearings shall be published in a newspaper of general circulation in the city. The notice shall include the time and place of the hearing. a

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~~general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing.~~

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Sec. 18-24. - City council hearing and action.

After receiving the final report of the commission, the city council shall, ~~after due notice in accordance with section 18-20,~~ hold a public hearing on the ~~amendment request, for which notice of the time and place of the hearing has been published in the official newspaper before the 15th day before the date of the hearing date.~~ After the close of the public hearing, the city council may approve or deny the request, return it to the commission for further consideration, or take whatever other action the city council deems appropriate.

