

FILE NUMBER: DCA156-009

DATE INITIATED: August 8, 2016

TOPIC: Late Hours Overlay

CITY COUNCIL DISTRICTS: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending the Dallas Development Code to create a new zoning overlay called, "Late Hours Overlay."

SUMMARY: The proposal proposes the creation of a new zoning overlay, called, "Late Hours Overlay." An overlay is a zoning tool which supplements an existing zoning district classification by establishing additional regulations or modifying existing regulations. This proposal is solely for the creation of the zoning overlay tool. It is not being applied to any area of the City as part of this process.

ZOAC RECOMMENDATION: No Change

STAFF RECOMMENDATION: Approval

BACKGROUND

On August 8, 2016 City Council's Quality of Life & Environment Committee was briefed on the regulations for late hour establishments in Planned Development District No. 842 (located along Lower Greenville). The committee discussed the issues parts of the city are having and directed staff to proceed to the Zoning Ordinance Advisory Committee to create a standardized tool for the creation of the overlay.

On November 29, 2016, the Sustainable Development & Construction Department held a public meeting at the Erik Jonsson Central Library to get feedback from residents, property owners, and bar & restaurants owners regarding the issues related to parking for retail and personal service uses utilizing outdoor areas and a potential late hours overlay. Approximately 321 people attended, predominately from the hospitality industry.

The Zoning Ordinance Advisory Committee considered this item at two public meetings: April 27, 2017 and May 18, 2017. On May 18, 2017 the committee voted to recommend no change to the Dallas Development Code.

The City Plan Commission was briefed and received public input on this item at two City Plan Commission Workshops: July 13, 2017 and August 10, 2017.

GENERAL INFO/STAFF ANALYSIS:

Zoning Overlays

An overlay is a zoning tool which supplements an existing zoning district classification by establishing additional regulations or modifying existing regulations. Currently, the Dallas Development Code has seven types of overlays: (1) the Historic Overlay (which was established to preserve places of historical, cultural, or architectural importance and significance); (2) the Institutional Overlay (which was established to promote cultural, educational, and medical institutions, and enhance their benefit to the community while protecting adjacent property); (3) the Modified Delta Overlay (used in areas where continued use of the delta theory is not justified); (4) the Neighborhood Stabilization Overlay (used to preserve single family neighborhoods by imposing neighborhood-specific yard, lot, and space regulations that reflect the existing character of the neighborhood); (5) the Historic Building Demolition Delay Overlay (which was established to allow a review period for the demolition of buildings older than 50 years that met certain criteria); (6) the D and D-1 Liquor Control Overlay (which only applies to D and D-1 Liquor Control Overlay Districts that were enacted before June 11, 1987, and was established to control the sale or serving of alcoholic beverages); and (7) the Parking Management Overlay District (which was established to allow City Council to impose conditions to ensure the adequate provision and efficient management of parking). Parking Management

Overlay Districts may only be established within WMU - Walkable Urban Mixed Use or WR - Walkable Urban Residential districts.

Existing Regulations in the Dallas Development Code that regulate late hour establishments

Currently, neither Chapter 51 nor Chapter 51A of the Dallas Development Code defines or has specific regulations for establishments that operate into the early morning hours. Some land uses that might be open for business between 12 a.m. and 6 a.m. are show in Table A, below.

Table A	
<u>Chapter 51A Uses</u>	<u>Chapter 51 Uses</u>
Alcoholic beverage establishments	Alcoholic beverage establishments
Commercial amusement (inside)	Inside Commercial Amusement
General merchandise or food stores (i.e., convenience stores, supermarkets, and drug stores)	Retail food store
	Clothing store
	Drug store
Personal service uses (i.e., tattoo parlors)	Personal service uses
Restaurants (with-out drive-in or drive-through service)	Restaurant without drive-in service
Restaurants (with drive-in or drive-through service)	Drive-in restaurant

Specific Use Permits (Chapter 51A-4.219)

The Dallas Development Code (Chapter 51 and Chapter 51A) does not define or have specific regulations for establishments that operate into the early morning hours. However, in some instances, Specific Use Permits (SUPs) provide a means to allow for the review and development of uses in a manner that will be compatible with adjacent properties. Some uses from Table A, above, that require a SUP are: Alcoholic beverage establishments¹; Restaurants (with-out drive-in or drive-through service)²; and Restaurants (with drive-in or drive-through service)³.

SUPs provide a means for developing certain uses in a manner in which a specific use will be consistent with the character of the neighborhood. Each SUP application must be evaluated as to its probable effect on the adjacent property and the community welfare and may be approved or denied as the findings indicate

¹ An SUP is required for an Alcoholic Beverage Establishment in the MF-4(A); Community Retail (CR); Regional Retail (RR); the Central Area districts (CA-1 and CA-2); Mixed Use districts (MU-1, MU-2, and MU-3); and the Urban Corridor districts (UC-2 and UC-3)

² An SUP is required for a Restaurant (with-out drive-in or drive-through service) in the neighborhood Office District [NO(A)].

³ An SUP is required for a Restaurant (with drive-in or drive-through service) in the Central Area (CA-1 and CA-2) zoning districts

appropriate. Dallas Development Code Chapter 51A, Section 51A-4.219 provides the general findings the City Plan Commission and City Council must consider when approving a Specific Use Permit (SUP).

Specifically, the City Council shall not grant an SUP for a use except upon a finding that the use will: (a) complement or be compatible with the surrounding uses and community facilities; (b) contribute to, enhance, or promote the welfare of the area of request and adjacent properties; (c) not be detrimental to the public health, safety, or general welfare; and (d) conform in all other respects to all applicable zoning regulations and standards.

Planned Development District No. 842

Planned Development District No. 842 (Lower Greenville) was adopted by City Council on January 26, 2011. PD No. 842 defines a “Late Hours Establishment” as a retail and personal service use that operates between 12 a.m. (midnight) and 6 a.m. The PD regulates these uses by requiring an SUP. The stated purpose of the PD is to ensure the compatibility of uses with adjacent residential neighborhoods and to reduce the incidence of crime by discouraging an over-proliferation of regional-serving, late-night venues.

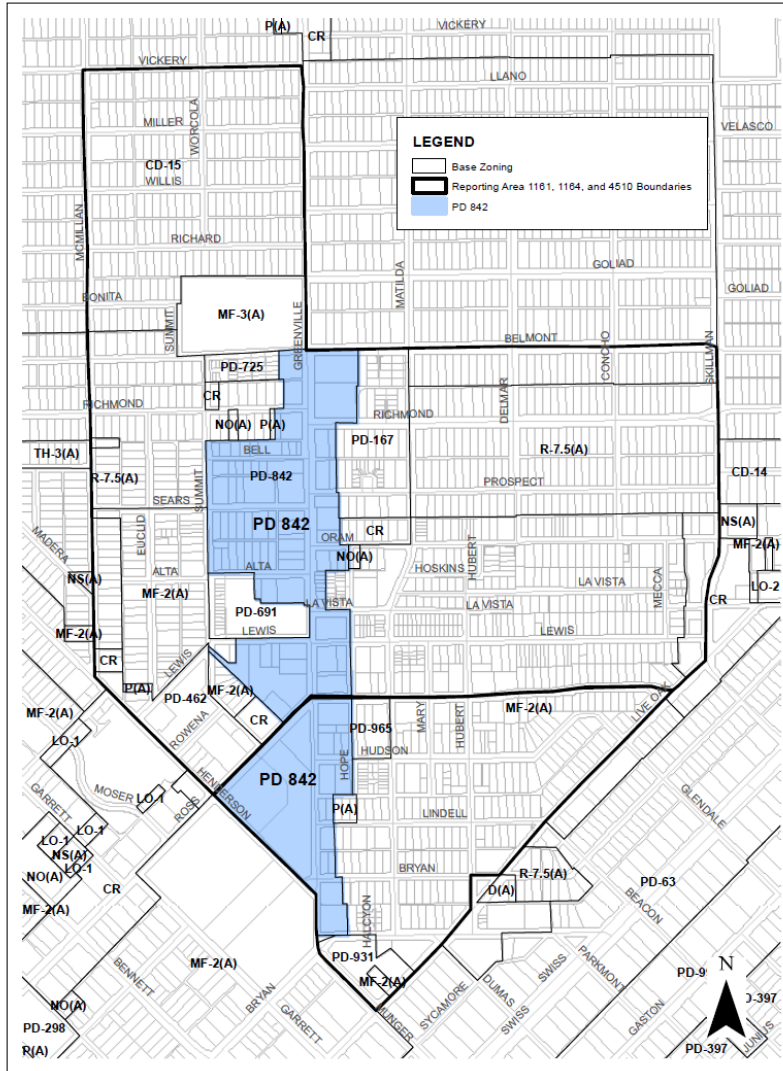
Specific Use Permits in PD 842

Since the adoption of Planned Development District 842 on January 26, 2011, twenty (20) Specific Use Permits (SUPs) have been applied for to allow Late-hours Establishments. Of the twenty, ten were for a late-hour establishment limited to a restaurant without drive-in or drive-through service; one was for a late-hour establishment limited to a commercial amusement (inside); six were for a late-hour establishment limited to a bar, lounge, or tavern; one was for a late-hour establishment limited to a commercial amusement (inside); two were for a late-hour establishment limited to a general merchandise or food store 3500 square feet or less and a motor vehicle fueling station. Additionally, of the twenty that were applied for, four were denied by City Council and one was denied by the City Plan Commission (with the applicant subsequently withdrawing their application).

Crime Stats

On the following page is a map showing DPD Reporting Areas 1161, 1164, 4510, and Planned Development District No. 842 (Lower Greenville) and two tables summarizing violent and non-violent crime in the reporting areas and citywide during the time period from 2008 through 2016 (for the hours from midnight to 6 a.m.)

PD 842 and DPD Reporting Areas 1161, 1164, and 4510



Total Violent/Non-Violent Crime in Reporting Areas 1161, 1164, and 4510 from Midnight to 6 a.m. (by Calendar Year)

YEAR	2008	2009	2010	2011	2012	2013	2014	2015	2016
CRIME TOTALS	122	104	92	56	46	41	31	43	42
% CHANGE		-15%	-12%	-39%	-18%	-11%	-24%	+39%	-2%

*Planned Development District No. 842 was adopted by City Council on January 26, 2011

Total Violent/Non-Violent Crime – City Wide from Midnight to 6 a.m. (by Calendar Year)

YEAR	2008	2009	2010	2011	2012	2013	2014	2015	2016
CRIME TOTALS	15008	13619	12224	11317	10617	10366	9977	10430	10890
% CHANGE		-9%	-10%	-7%	-6%	-2%	-4%	+4%	+4%

ISSUES:

Different areas of the city have experienced impacts from establishments that operate late at night and into the early morning hours. Many of these establishments are in close proximity to residential neighborhoods. Some issues potentially related to these uses are noise, crime, trash, and property damage, etc. Some existing resources currently available within the City Code that may address the concerns of adjacent residential neighborhoods are:

Resident-Parking-only Program

The Resident-parking-only (RPO) Program is intended to address the problems that arise when residential streets are used for the parking of motor vehicles by persons using adjacent nonresidential parking generators, but who do not reside in the neighborhood. To report parking violations, a citizen must: 1) know the type of parking violation; 2) the location of the violation; 3) the license plate number of the vehicle in violation; 4) a description of the vehicle in violation, and 5) whether the violation is occurring on public or private property. Then the citizen must call City Services Dispatch at 3-1-1.⁴

Noise Complaints

Chapter 30 of the Dallas City Code covers Noise. In the City, a person commits an offense if he makes or causes to be made any loud and disturbing noise or vibration in the city that is offensive to the ordinary sensibilities of the inhabitants of the city. Per 3-1-1, for the initial reporting of a noise complaint for a location, a citizen should call 9-1-1. However, to report noise complaints of a chronic or reoccurring nature, a citizen should call 3-1-1.

Public Intoxication and Trespassing

For complaints regarding public intoxication and trespassing, a citizen should call 9-1-1.

RESEARCH:

Austin

In the Neighborhood Commercial District, hours of operation for restaurants are limited to no later than 11:00 p.m.

Fort Worth

Some Planned Development Districts restrict hours of operation of certain uses.

⁴ Source: <http://www.dallaspolice.net/abouts/parkingEnforcement>

Graham, TX

Nightclubs prohibited within 500' of residential districts.

Sec. 16-9.3. - Operation of nightclubs and/or private clubs located adjacent to residential zone.

(a) It shall be unlawful to locate and operate a night club, private club, or any business that sells, serves or makes available any alcoholic beverage on their premises within five hundred (500) feet of any land zoned residential by the City of Graham.

San Antonio

Massage businesses can only operate between 8:00 a.m. and 10:00 p.m.

Billiard halls can only operate between 7:00 a.m. and 2:00 a.m.

San Jose, CA

Regulates late night use and activity by requiring Conditional Use Permits.

No establishment other than office uses, in any commercial district shall be open between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a conditional use permit.

No outdoor activity, including loading, sweeping, landscaping or maintenance shall occur within one-hundred fifty feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a conditional use permit as provided in Chapter 20.100.

Regulates outdoor uses with 150 feet of residentially zoned property.

No use, which in whole or in part, consists of, includes, or involves any outdoor activity or sale or storage of goods, products, merchandise or food outdoors shall occur on any lands if any part of such lands or any part of the lot on which such buildings are located is situated within one hundred fifty feet of residentially zoned property situate within or outside the city except with a special use permit.

New York City

Staff was asked at the August 10, 2017 City Plan Commission Workshop to research the late-hours policy for New York City. On August 24, 2017 the New York City Council voted to approve a bill establishing an Office of Nightlife and a Nightlife Advisory Board to evaluate and make recommendations that address common

issues and trends in the nightlife industry. The Office of Nightlife will conduct outreach, review information on complaints and violations, and serve as a liaison between nightlife establishments, residents, and government. The Office of Nightlife will also assist nightlife establishments navigate city licensing requirements, permits, or other approvals.⁵

San Francisco

Additionally, staff has reached out to the City of San Francisco regarding a similar program titled “Nightlife SF” in the Nightlife and Entertainment Sector within the Office of Economic and Workforce Development. Nightlife SF is a program that was created approximately four years ago to provide support for entertainment related businesses. Nightlife SF works in tandem with the Entertainment Commission which is the regulatory body for obtaining entertainment-related permits, extended hours permits, and enforcing the city’s “Good Neighbor Policy.” The Entertainment Commission, which has been in existence since 2002, can set conditions for entertainment-related uses and extended hours uses through a public hearing process.

⁵ Source: New York City Council
<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3131400&GUID=E6CEAE78-6D18-4C8F-8124-D9445FEF838F&Options=ID%7CText%7C>

STAFF PROPOSAL:

The purpose of a Late Hours Overlay is to ensure the compatibility retail and personal service uses (that operate in the early morning hours) with adjacent residential neighborhoods.

General provisions.

- (1) The City Plan Commission or City Council may initiate a “Late Hours Overlay District” following the procedure in Section 51A-4.701, “Zoning Amendments,” which is the authorization of a public hearing by the City Plan Commission or City Council.
- (2) A late hours overlay may only be placed on an area that is zoned nonresidential or mixed use and developed primarily with retail and personal service uses. The area must be physically contiguous and be no less than a blockface in area. A Blockface means the linear distance of lots along one side of a street between the two nearest intersecting streets. If a street dead ends, the terminus of the dead end will be treated as an intersecting street.

Definitions and Interpretations.

- (1) Unless otherwise stated, the definitions and interpretations in Chapter 51A or Chapter 51, as applicable, apply to the overlay.
- (2) However, in the overlay, a **Late-Hours Establishment** would mean a retail and personal service use in Chapter 51A and comparable uses in Chapter 51 that operates, offers services to the public, and/or has customers remaining in the establishment between 12 a.m. (midnight) and 6 a.m.
- (3) All other requirements in the Dallas Development Code and City Code in addition to applicable state and federal regulations would apply to the district

Main Uses Permitted.

- (1) The main uses permitted in any proposed overlay district would depend on the existing zoning, subject to the same rules and conditions applicable to those districts, as set forth in Chapter 51 or 51A of the Dallas Development Code, as applicable.
- (2) However, the following use would be permitted only by SUP:

--Late-hours establishment

Additional provisions.

- (1) Except for late-hour establishments operating under a valid specific use permit, approved subject to the factors listed herein, all services for the public must be stopped and all customers must be removed from the establishment between 12 a.m. (midnight) and 6 a.m.

Additional SUP Requirements for the Late Hours Overlay.

- (1) Factors to be considered for a specific use permit for a Late-Hour Establishment. The City Plan Commission and City Council shall consider the following additional factors when making the findings required by Section 51A-4.219 (a)(3):
 - (i) The number of citations issued by police to patrons of the establishment;
 - (ii) The number of citations issued by police for noise ordinance violations by the establishment;
 - (iii) The number of arrests for public intoxication or disorderly conduct associated with the establishment;
 - (iv) The number of Texas Alcoholic Beverage Code violations of the establishment; and
 - (v) The number of violent crimes associated with the establishment, with emphasis on violent crimes originating inside the establishment.

Zoning Ordinance Advisory Committee (ZOAC) Meeting Minutes

May 18, 2017

Motion to make no change to the Dallas Development Code as it relates to the consideration of amending the Dallas Development Code to create a new zoning overlay called, "Late Hours Overlay".

Motion: Murphy
2nd: Houston

Result: Passed: 5 to 0
For: Shidid, Hartmann, Benedict, Murphy, and Mack (City Plan Commissioner)
Against: None
Absent: Gomez, Brown and Houston

DRAFT Late Hours Overlay District

ORDINANCE NO. _____

An ordinance amending Chapter 51, "Dallas Development Code: Ordinance No. 10962, as amended," [and/or] Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code by amending Section ____; providing (description of amendment); 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 Subparagraph ____ of Paragraph ____, "____," of Subsection ____, "____," of Section 51-____, "____," of Division 51-____, "____" of Article ____, "____," of Chapter 51, "Dallas Development Code: Ordinance No. 10962, as amended," of the Dallas City Code is amended to read as follows:

"SEC. 51-XXXX. LATE HOURS OVERLAY DISTRICT.

(a) Except as provided in this section, the language of Section 51A-XXXX of Chapter 51A of the Dallas Development Code, as amended is incorporated by language.

(b) The following uses are subject to the late hours overlay:"

SECTION 2. That Division 51A-4.500, "Overlay and Conservation District Regulations," of Article IV, "Zoning Regulations," of Chapter 51A, "Dallas Development Code: Ordinance No.

19455, as amended," of the Dallas City Code is amended by adding a new Section 51A-XXXX to read as follows:

"SEC. 51A-XXXX. LATE HOURS OVERLAY DISTRICT.

(a) Purpose. A Late Hours Overlay District is intended to ensure the compatibility of certain uses with adjacent residential neighborhoods.

(b) Definition. In the district, LATE HOURS ESTABLISHMENT means a retail and personal service use that operates, offers services to the public, and has customers remaining in the establishment between 12 a.m. (midnight) and 6 a.m.

(c) General provisions.

(1) The city council may initiate a late hours overlay district following the procedure in Section 51A-4.701, "Zoning Amendments."

(2) This section applies to any personal service or retail use located in a late hours overlay district.

(3) A proposed late hours overlay district must be zoned nonresidential, developed primarily with retail and personal service uses, and be a physically contiguous area of at least one full blockface.

(d) Late hours establishment.

(1) The following additional use regulations apply:

(A) SUP. A late hours establishment is only permitted with an SUP.

(B) Additional SUP factors. The following must be considered when determining whether to grant or deny an SUP:

(i) the number of citations issued by police to patrons of the establishment;

(ii) the number of citations issued by police for noise ordinance violations by the establishment;

- (iii) the number of arrests for public intoxication or disorderly conduct associated with the establishment;
- (iv) the number of Texas Alcoholic Beverage Code violations of the establishment; and
- (v) the number of violent crimes associated with the establishment, with emphasis on violent crimes originating inside the establishment.

(C) Traffic impact analysis waiver. A traffic impact analysis is not required in connection with an application for a specific use permit for a Late-Hours Establishment in this district.”

SECTION 3. That adjustments will be made to the section references in this ordinance for codification purposes only. A Dallas Development Code section reference containing the symbol “[A],” for example, “Section 51[A]-_____,” means that the letter “A” will appear in the Chapter 51A version only, and will not appear in the Chapter 51 version.

SECTION 4. That the director of sustainable development and construction shall revise the use charts to reflect the change in use regulations made by this ordinance, and shall provide these charts for publication in the Dallas Development Code. *[If the amendment changes a use chart.]*

SECTION 5. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 6. That Chapter(s) (51 and) 51A of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 7. 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 8. 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 9. 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:

LARRY E. CASTO, City Attorney

By _____
Assistant City Attorney

Passed _____