

ORDINANCE AMENDMENT REVIEW SHEET

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Amendment: C2O-2011-008

Description:

Amend Title 2 and Title 25 of the City Code relating to Special Exceptions and Fee Waivers for certain code violations.

Background:

As a result of anonymous complaints triggering enforcement action by the Code Compliance Department on several residential properties in the south Austin neighborhood known as Fairview last year, this amendment has been proposed to assist the affected property owners with an alternative process to bring their non-complying buildings into compliance. The proposed ordinance (See Attachment "A") would recognize that conditions non-compliant with building permit and land use codes may exist on certain residential properties and that many long-term property owners may not be aware of these conditions. This amendment would apply to property located with the full or limited purpose annexation areas within the City of Austin and not to property located within its extraterritorial jurisdiction (ETJ) area.

As a means to address compliance and life safety issues and equitability, the amendment would allow an expansion of the City's amnesty program by authorizing the Board of Adjustment to grant a special exception in limited circumstances, as authorized by State law. Under the current ordinance, amnesty through an exemption from compliance provision is limited only to uses within structures that were in existence prior to March 1, 1986 (the date when the previous cumulative Zoning Ordinance expired) and not subject to an enforcement action on January 1, 1988 (see Attachment "B").

This amendment would provide a new special exception provision that would only apply to an existing residential structure or a portion of an existing structure that violates a zoning setback, and only to a residential use that is permitted in an Family Residence (SF-3) zoning district (examples may include: a detached single family residence, a duplex residence or a two-family residential use). The special exception may be granted after the Building Official performs an inspection and determines that the violation does not pose a hazard to life, health or public safety.

In addition, the Board of Adjustment may grant a special exception after a noticed public hearing is held and after they make certain findings which may include the following: 1) the non-compliance/violation has existed for at least 25 years or at least 15 years, if the application for the special exception is submitted within two years from the effective date of the ordinance; 2) the use is a permitted use or a (legal) non-conforming use; 3) the structure does not share a lot with more than one other residential structure; and 4) the granting of the special exception would not alter the character of the area, impair the use of an adjacent property developed in accordance

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with the City Code or grant a special privilege that is inconsistent with other properties in the area in which the property is located.

The proposed ordinance allows for a fee waiver or refund of the Board of Adjustment application fee and a refund for certain building related permit and inspection fees for the existing structures under certain circumstances for a period within two years from the effective date of the ordinance.

Departmental Comments:

Compliance with this proposed ordinance is not mandatory and would allow a property owner another option under the City Code to bring a structure into compliance with the City's zoning regulations. This amendment would not cure all non-complying situations, such as a building encroaching illegally into a public utility easement or allow un-permitted structures to be maintained in a 100 year flood plain. Other processes exist to address these encroachments and are not proposed to be changed with this amendment. There would be no impact on housing affordability (See Attachment "C.")

Staff Recommendation:

Staff recommends approval of the proposed code amendment.

Planning Commission Action:

March 15, 2011: The Codes and Ordinances Committee of the Planning Commission forwarded this amendment on to the full Planning Commission with a recommendation for approval (5-0).

April 12, 2011:

City Council Date and Action:

Ordinance Number:

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ORDINANCE NO.

1 AN ORDINANCE RELATING TO SPECIAL EXCEPTIONS AND FEE
 2 WAIVERS FOR CITY CODE VIOLATIONS; AMENDING CITY CODE
 3 SECTIONS 2-1-111, 25-1-211, 25-1-212, 25-1-214, 25-1-215, 25-1-216, 25-1-217,
 4 AND 25-1-218; AND ADDING NEW SECTIONS 25-1-366 AND 25-2-476.
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6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
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8 PART 1. The city council finds that:

- 9 (A) Certain technical code and zoning violations exist on residential properties
 10 throughout the City of Austin. In some cases, these violations have existed
 11 compatibly with the surrounding neighborhoods for 25 or more years with no
 12 known adverse impacts to public health, safety, or welfare.
- 13 (B) In such cases, the City's existing amnesty program, as codified in Section 25-1-
 14 365 of the Land Development Code, provides a mechanism for excusing full
 15 compliance with city regulations for certain minor violations existing on or
 16 before adoption of the current zoning code on March 1, 1986.
- 17 (C) To address setback violations that meet all requirements for administrative
 18 amnesty except for the 1986 cutoff date, the Board of Adjustment could be
 19 authorized to grant a special exception in limited circumstances. A special
 20 exception, as authorized under state law, may be granted without a hardship
 21 finding required for a traditional zoning variance.
- 22 (D) Together with the City's existing amnesty program, authorizing special
 23 exceptions and waiving fees for landowners seeking to address minor zoning
 24 setback violations would allow enforcement staff to focus on more significant
 25 violations of city code.
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27 PART 2. Subsection (F) of City Code Section 2-1-111 (*Board of Adjustment*) is
 28 amended to read:

29 (F) The board shall:

- 30 (1) hear and decide a request for a variance from the requirements of Chapter
 31 25-2 (*Zoning*), except as otherwise provided by the Code;
- 32 (2) hear and decide an appeal of an administrative action under Chapter 25-2
 33 (*Zoning*);

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- 1 (3) hear and decide a request for a variance from the requirements of airport
- 2 zoning regulations under Section 241.034, Local Government Code;
- 3 [and]
- 4 (4) hear and decide a request for a special exception under Chapter 25-2
- 5 (Zoning); and
- 6 (5)[(4)] perform other duties prescribed by ordinance or state law.

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8 **PART 3.** City Code Chapter 25-2 (*Zoning*), Article 2 (*Appeals, Variances, Special*

9 *Exceptions, and Adjustments*) is amended to amend the title of Division 2 (*Variances*)

10 and to amend Sections 25-1-211 (*Application for a Variance*), 25-1-212 (*Report*), 25-1-

11 214 (*Public Hearing and Notice*), 25-1-215 (*Action on Application*), 25-1-216 (*Effective*

12 *Date of Variance*), 25-1-217 (*Expiration of Variance*), and 25-1-218 (*Restrictions on*

13 *Similar Applications*) to read as follows:

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15 **Division 2. Variances and Special Exceptions.**

16 **§ 25-1-211 APPLICATION FOR A VARIANCE OR SPECIAL EXCEPTION.**

- 17 (A) A person may file an application for a variance or a special exception with:
- 18 (1) the building official for a variance or special exception granted by the
 - 19 Board of Adjustment; or
 - 20 (2) the responsible director for a variance granted by the Land Use
 - 21 Commission or the council.
- 22 (B) An application ~~may include~~ a request for:
- 23 (1) variances or special exceptions from regulations applicable to the same
 - 24 site; or
 - 25 (2) similar variances or special exceptions on two or more adjacent parcels
 - 26 with similar characteristics.

27 (C) The building official or responsible director may require that the applicant

28 provide information that the building official or responsible director determines is

29 necessary to evaluate the variance or special exception request.

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31 **§ 25-1-212 REPORT.**

32 (A) For an application for a variance or special exception requiring consideration by

33 the Board of Adjustment, the building official shall prepare and file a report with the

34 board not later than the 11th day before the public hearing.

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1 (B) For an application for a variance requiring consideration by the Land Use
2 Commission, the responsible director shall prepare and file a report with the Land Use
3 Commission not later than the 11th day before the public hearing.

4 (C) The building official shall make a report described in this section available to
5 the public when the report is filed with the Board of Adjustment or Land Use
6 Commission.

7 (D) This subsection applies to an application for a zoning variance or special
8 exception for property zoned as a family residence (SF-3) or more restrictive district.

9 (1) The building official shall waive the application fee if the official
10 determines that the variance or special exception is supported by the
11 notice owners of 80 percent or more of the property located within 300
12 feet of the property for which the variance is sought.

13 (2) An applicant who seeks a fee waiver must:

14 (a) obtain the signature of each notice owner who supports the variance
15 or special exception, on a form provided by the building official;
16 and

17 (b) submit the completed form to the building official.
18

19 **§ 25-1-214 PUBLIC HEARING AND NOTICE.**

20 (A) The Board of Adjustment or Land Use Commission, as applicable, shall hold a
21 public hearing on an application for a variance or special exception not later than the 45th
22 day after the date the application is filed.

23 (B) The building official or responsible director, as applicable, shall give notice
24 under Section 25-1-132(A) (*Notice Of Public Hearing*) of a public hearing on an
25 application for a variance or special exception, and, for a variance or special exception
26 heard by the Board of Adjustment, by posting one or more signs.
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28 **§ 25-1-215 ACTION ON AN APPLICATION.**

29 (A) Except as otherwise provided in this chapter, the Board of Adjustment or the
30 Land Use Commission shall act on an application for a variance or special exception not
31 later than the next meeting after the public hearing is closed.

32 (B) The Board of Adjustment or the Land Use Commission may:

33 (1) approve an application for a variance;

34 (2) approve an application for a variance with modifications; or

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(3) deny an application for a variance.

(C) The Board of Adjustment or the Land Use Commission may require that a variance be:

- (1) revocable;
- (2) effective for a specified time period; or
- (3) subject to one or more conditions.

(D) The Board of Adjustment may act on a request for a special exception in the manner provided for variances under Subsections (B) and (C) of this section.

§ 25-1-216 EFFECTIVE DATE OF VARIANCE OR SPECIAL EXCEPTION.

(A) Except as provided in Subsection (B), a decision on a variance or special exception is effective immediately.

(B) If a variance or special exception is appealable, a decision on the variance is effective:

- (1) except as provided in Subsection (B)(2), at the expiration of the time period during which an appeal may be filed; or
- (2) if a notice of appeal is filed, when a final decision on the appeal is made.

§ 25-1-217 EXPIRATION OF VARIANCE OR SPECIAL EXCEPTION.

(A) Except as provided in Subsection (B), a variance or special exception expires:

- (1) except as provided in Subsection (A)(2), one year after the effective date of the variance or special exception; or
- (2) on the date established as a condition of approval.

(B) A variance or special exception expires on the date an approved plan or permit expires if:

- (1) an application for approval of a plan or permit is submitted before a variance or special exception expires under Subsection (A); or
- (2) the variance or special exception is granted in association with the approved plan or permit.

§ 25-1-218 RESTRICTION ON SIMILAR APPLICATIONS.

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1 If an application for a variance or special exception is denied, or if a variance or
2 special exception is revoked, a person may not file an application for the same or a
3 similar variance or special exception on the same or a substantially the same site for a
4 period of one year from the date of denial or revocation.
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6 **PART 4.** City Code Chapter 25-2 (*Zoning*) is amended to repeal and replace Article 7,
7 Division 3 (*Special Exceptions*) with a new Division 3 to read as follows:

8 **Division 3. Reserved.**

9 **PART 5.** City Code Chapter 25-2 (*Zoning*) is amended to add a new Section 25-2-476 to
10 read:

11 **§ 25-2-476 SPECIAL EXCEPTIONS.**

12 (A) Subject to the limitations under Subsection (B) of this section, the Board of
13 Adjustment may grant a special exception for an existing residential structure, or portion
14 of an existing structure, that violates a setback required under Chapter 25-2 (*Zoning*).

15 (B) The Board may grant a special exception under Subsection (A) of this section
16 if:

- 17 (1) the residential use for which the special exception is sought is allowed in
18 an SF-3 or more restrictive zoning district;
- 19 (2) the building official performs an inspection and determines that the
20 violation does not pose a hazard to life, health, or public safety; and
- 21 (3) the Board finds that:
- 22 (a) the violation has existed for:
- 23 (i) at least 25 years; or
- 24 (ii) at least 15 years, if the application for a special exception is
25 submitted on or before {insert date of 2 years from the effective
26 date of the ordinance;
- 27 (b) the use is a permitted use or a nonconforming use;
- 28 (c) the structure does not share a lot with more than one other
29 residential structure; and
- 30 (d) granting a special exception would not:
- 31 (i) alter the character of the area;

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- (ii) impair the use of adjacent property that is developed in compliance with city code; or
- (iii) grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

(C) A special exception granted under this section:

- (1) applies only to the structure, or portion of a structure, for which the special exception was granted and does not run with the land;
- (2) may not authorize an increase in the degree of noncompliance or excuse compliance minimum health and safety requirements; and
- (3) may not authorize a remodel or addition to the existing structure, except to the extent required by the building official to meet minimum life and safety requirements.

(D) A structure granted a special exception under this section shall be treated as a non-complying structure under Chapter 25-2, Article 8 (*Noncomplying Structures*).

PART 6. City Code Section 25-2 (*Zoning*) is amended to add a new Section 25-1-366 to read:

§ 25-1-366 FEE WAIVER PROGRAM FOR EXISTING RESIDENTIAL STRUCTURES.

(A) Subject to the requirements of Subsection (B) of this section, the director shall:

- (1) waive the fee for a variance application to the Board of Adjustment under Section 25-2-473 (*Variance Requirements*) or a special exception under 25-2-476 (*Special Exceptions*); and
- (2) refund permitting and inspection fees if:
 - (a) the building official determines, based on a minimum life-safety inspection, that the structure does not pose a hazard to life, health, or public safety; and
 - (b) the structure:
 - (i) complies with current zoning regulations; or
 - (ii) the structure receives a special exception or variance from the Board of Adjustment or certificate of occupancy or

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Fee Waivers & Special Exceptions

Discussion Draft

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compliance from the building official under Section 25-1-365 (*Exemption from Compliance*).

- (B) A fee waiver or refund authorized under Subsection (A) of this section:
 - (1) applies only to existing residential structures and do not cover permits for remodels, except to the extent required by the building official to address minimum life and safety requirements;
 - (2) does not cover fees for re-inspections or for after-hours inspections; and
 - (2) expires on {insert date of 2 years from the effective date of the ordinance}.

(C) The director shall refund fees collected after {insert date of 6 months or 1-year prior to effective date of the ordinance} if the requirements for waiver under this section are met.

PART 7. This ordinance takes effect on _____, 2010.

PASSED AND APPROVED

_____, 2011 §
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Lee Leffingwell
Mayor

APPROVED: _____
Karen Kennard
Acting City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

Attachment "B"

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CHAPTER 25-1. GENERAL REQUIREMENTS AND PROCEDURES.

ARTICLE 9. CERTIFICATES OF COMPLIANCE AND OCCUPANCY.

§ 25-1-365 EXEMPTION FROM COMPLIANCE.

(A) This section applies to an existing use or occupancy for which a certificate of occupancy was not issued if:

- (1) the structure in which the use or occupancy occurs existed before March 1, 1986;
- (2) the use or occupancy was established before March 1, 1986;
- (3) the use or occupancy was not subject to an enforcement action on January 1, 1988;
- (4) the use is a permitted use or is a nonconforming use; and
- (5) the use is not an adult-oriented business use.

(B) The building official shall issue a certificate of occupancy for a use or occupancy described in Subsection (A) if the building official determines that continuing the existing use or occupancy is not a hazard to life, health, or the public safety.

(C) The building official shall issue a certificate of occupancy under Subsection (B) notwithstanding the noncompliance of an existing use or occupancy or of a building in which the use or occupancy occurs with applicable technical code requirements or site development regulations.

Source: Section 13-1-732(f); Ord. 990225-70; Ord. 031211-11.