

ORDINANCE AMENDMENT REVIEW SHEET

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Amendment: C2O-2011-036 Land Use Determination

Description:

Amend City Code Chapters 25-1 (General Requirements and Procedures) and 25-2 (Zoning) to: (A) establish appropriate requirements for the issuance, notification, and appeal of zoning use determinations; and (B) require that use determinations be made either concurrent with issuance of a development approval or as part of a pre-permitting review process that provides for public notice.

Staff Recommendation:

Staff has prepared a draft proposal to meet the intent of the Council resolution.

Discussion:

The proposed ordinance would increase notification for land use determinations and change the approval process in the following ways:

In situations where staff is permitting a typical use allowed (as permitted or conditional) in a zoning category, no additional requirements would apply. This would not be considered a "use determination" for purposes of applying the code. However, if a proposed use is a new proposed use, or something not yet considered in past cases, then a use determination would be required.

If the use determination is made in conjunction with a site plan, then the use determination would be included as part of the notice provided with the site plan. The date of the notice is then the date of the use determination for purposes of Board of Adjustment appeals. If a BOA appeal is filed, then that stays any further processing the site plan until the use issue is resolved.

It's very rare that a use determination would be made in connection with a project requiring only a building permit, because most site plan exempt projects are typical projects such as single-family home in single family zoning, and involve no judgment or discretion to determine the use. But if a use determination is being made, then notice of the determination be provided.

A use determinations that is not tied to a particular permit can be requested by anyone, but must still list a particular address or property. An applicant considering a potential project would be able to utilize this use determination for that property once they applied for a permit.

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Board and Commission Actions

Planning Commission Committee on Codes and Ordinances – January 17, 2012: The Committee forwarded this to the Planning Commission for public hearing and consideration without a recommendation.

Planning Commission

January 24, 2012: Planning Commission postponed the public hearing and action until February 14, 2012 at the request of a business representative group.

February 14, 2012: Planning Commission is scheduled for a public hearing and possible action on this item

City Council Action

December 15, 2011: City Council adopts resolution 20111215-059 (attached) directing staff to prepare and ordinance amending City Code regarding zoning use determinations and to bring the ordinance back for their consideration within 90 days.

March 8, 2012: The City Council is scheduled for public hearing and possible action on this item.

Ordinance Number:

City Staff: Robert Heil

Phone: 974-2330

Email: Robert.Heil@AustinTexas.gov

§ 25-2-2 DETERMINATION OF USE CLASSIFICATION.

(A) The director of the ~~[Neighborhood]~~ Planning and Development Review ~~[Zoning]~~ Department shall determine the appropriate use classification for an existing or proposed use or activity.

(B) If it is unclear how a particular use is classified within a zoning category or land use definition, ~~[In making a determination under this section,]~~ the director ~~[of the Neighborhood Planning and Zoning Department]~~ shall determine the appropriate use classification based on the ~~[consider]~~ the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C) The requirements of this subsection apply to a use determination made under Subsection (B) of this section.

(1) A use determination made in connection with a development application is subject to the following requirements:

(a) If the director determines that a proposed use is prohibited, the director shall deny the application and provide written notice of the use determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*). A notice of application for the project under Section 25-1-133(A) (*Notice of Application and Administrative Decisions*) is not required.

(b) If the director determines that a use is permitted or conditional, the director shall:

(i) include the use determination in the notice of application required under Section 25-1-133(A) (*Notice of Application and Administrative Decision*), if the project requires a site plan; or

(ii) provide notice of the use determination under Section 25-1-133(B) (*Notice of Application and Administrative Decision*), if the project does not require a site plan.

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- (c) The director may reverse a preliminary use determination on an application requiring notice under Section 25-1-133(A) (*Notice of Applications and Administrative Decisions*) if, no sooner than fourteen days after providing notice, the director determines the preliminary decision was in error. Notice of a revised decision shall be provided under Section 25-1-133(B) (*Notice of Application and Administrative Decision*).
- (2) A use determination that is not associated with a development application is a "non-project use determination" and is subject to the following requirements:

 - (a) The director may make a non-project use determination at the request of an applicant, or on the director's own initiative, for an existing or proposed land use on any site or property in the zoning jurisdiction.
 - (b) To request a non-project use determination, an applicant must submit an application on a form provided by the director along with a fee established by separate ordinance. The director may require that an application include all information deemed necessary to make a determination, including information related to the size and intensity of a proposed use, but should not require the same level of design or construction-level detail as a development application.
 - (c) Notice of an application for a non-project use determination shall be provided under Section 25-1-133(A) (*Notice of Application and Administrative Decision*), and notice of the decision shall be provided under Section 25-1-133(B) (*Notice of Application and Administrative Decision*).

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(3) A use determination must be limited to the classification of existing or proposed land uses and may not interpret site development regulations.

(D) The requirements of this subsection apply to administrative appeals of a use determination made under this section.

(1) An interested party may appeal a determination of the director [~~of the Neighborhood Planning and Zoning Department~~] under Subsection (B) this section to the Board of Adjustment in accordance with the requirements of Chapter 25-1, Article 7.

(2) A use determination is deemed to be made on the date that notice of the determination is provided under Section 25-1-133(A) or 25-1-133(B) (*Notice of Application and Administrative Decision*).

(3) If an interested party appeals a determination by the director that a proposed use is conditional, no action shall be taken by the Land Use Commission on the site plan application unless the Board of Adjustment upholds director's determination or the appeal.

(4)[(D)] The director [~~of the Neighborhood Planning and Zoning Department~~] shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E) The requirements of this subsection govern the effect of a use determination by the director or the Board of Adjustment.

(1) A use determination made in connection with a development application applies to the project described in the application and to future development applications affected by the determination.

(2) A non-project use determination applies to future development applications affected by the determination.

(3) A use determination does not render previously permitted projects non-conforming under Section 25-2-941 (Nonconforming Use Defined), unless the Land Development Code is amended to reflect the determination.

(F) The director [of the Neighborhood Planning and Zoning Department] shall maintain a list of determinations made under this section.

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RESOLUTION NO. 2011215-059

WHEREAS, if a proposed land use does not fit clearly within an existing land use category defined by the Land Development Code, the Planning & Development Review Department ("PDRD") must determine which of the existing zoning categories most closely matches the proposed land use; and

WHEREAS, a use determination can significantly impact the type of development allowed within a zoning district, which in turn impacts residents, business owners, landowners, and developers; and

WHEREAS, current code does not clearly define the process for obtaining and issuing use determinations and includes an appeal process but no provisions for notifying interested parties; and

WHEREAS, citizens are sometimes unaware when a determination is made and thus cannot exercise their right to appeal the determination to the Board of Adjustment; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. The City Council initiates code amendments to City Code Chapters 25-1 (*General Requirements and Procedures*) and 25-2 (*Zoning*) and directs the City Manager to develop a proposed ordinance that:

- (A) establishes appropriate requirements for the issuance, notification, and appeal of zoning use determinations; and

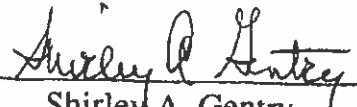
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(B) requires that use determinations be made either concurrent with issuance of a development approval or as part of a pre-permitting review process that provides for public notice.

2. The City Manager is directed to present a draft ordinance consistent with the terms of this resolution for consideration by the Council within 90 days.

ADOPTED: December 15, 2011

ATTEST:


Shirley A. Gentry
City Clerk