

DAVID A. ESCAMILLA
COUNTY ATTORNEY

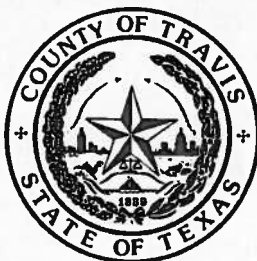
STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
GRANGER BLDG., SUITE 420
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



LAND USE DIVISION

TOM NUCKOLS, DIRECTOR

CHRISTOPHER GILMORE

JULIE JOE

August 1, 2012

Mr. Jason Boatright
Chair, Opinion Committee
Office of the Attorney General
P.O. Box 12458
Austin, Texas 78711-2548

RE: Opinion Request RQ-1070-GA

Dear Mr. Boatright:

Travis County and City of Austin jointly regulate subdivision plats in the extraterritorial jurisdiction of the City of Austin under Chapter 242, Local Govt. Code. Therefore, Travis County is familiar with how the City administers its Project Duration Ordinance. The City applies the ordinance in a manner that is entirely consistent with chapter 245, Local Govt. Code.

Section 245.002(a), Local Govt. Code, provides:

“(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, *expiration dates*, or other properly adopted requirements *in effect at the time*:

(1) *the original application for the permit is filed* for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.” (Emphasis added.)

Section 245.002(b), Local Govt. Code, provides:

"If a series of permits is required for a project, the orders, regulations, ordinances, rules, *expirations dates*, or other properly adopted *requirements in effect at the time the original application for the first permit in that series is filed* shall be the sole basis for consideration of all subsequent permits required for the completion of the project."

Section 245.002(c), Local Govt. Code, provides:

"*After an application for a project is filed*, a regulatory agency may not shorten the duration of any permit required for the project."

These provisions of Chapter 245 recognize a local government's authority to adopt permit expiration dates, as long the dates are not changed after the permit application is filed so as to retroactively to shorten the duration of that permit. In this regard, expiration dates are treated like any other development regulation covered by Chapter 245.

The City of Austin applies its Project Duration Ordinance in a manner that complies with Chapter 245 because the City applies it only to projects for which the original permit application was filed after the ordinance's effective date of September 6, 1997. The City does not in any way apply the ordinance in a manner that retroactively shortens the duration of a permit.

Some parts of the Project Duration Ordinance were superseded when Chapter 245 became law in 1999. These include the ordinance's requirements imposing vesting standards retroactively for projects commenced before its effective date of September 6, 1997. Again, because the City does not in any way apply or attempt to enforce these parts of ordinance, the City complies with Chapter 245.

Project expiration dates and project dormancy are two distinct matters under Chapter 245. Project dormancy is addressed in §245.005. That section deals only with permits for projects if "no progress has been made towards completion of the project." This section allows local governments to prevent unfinished development from remaining grandfathered in perpetuity. Just as Chapter 245 contains separate sections on permit expiration dates and project dormancy, the City's regulations address project dormancy in a different section than it addresses Project Duration.

The opinion request correctly notes that the Project Duration Ordinance was adopted during the 2-year period when state vesting legislation had been repealed and that, in enacting HB 1704 in 1999, the Legislature declared that no action taken during the repeal period could cause or require the expiration or termination of a project, permit or series of permits to which HB 1704 applied. Section 1(d) of HB 1704 provides:

"It is the intent of the legislature that no project, permit, or series of permits *that was protected by former Subchapter I, Chapter 481, Government Code*, be

prejudiced by or required or allowed to expire because of the repeal of former Subchapter I or an action taken by a regulatory agency after the repeal.”
(Emphasis added.)

The only projects that were protected by former Subchapter I, Chapter 481 Government Code were those for which the original permit application was filed before the repeal of Subchapter I in 1997. Again, the City does not apply its Project Duration Ordinance to projects for which the original permit application was filed when Subchapter I was in effect. Therefore, the City’s application of the ordinance complies with Chapter 245.

The opinion incorrectly presumes a project is perpetually grandfathered to earlier regulations unless it is a dormant project. This reading of the statutes would totally negate Chapter 245’s express recognition of local governments’ authority to adopt permit expiration dates. It would render language §245.002(a), §245.002(b), and §245.002(c) totally meaningless.

For the foregoing reasons, any opinion the Attorney General issues on this matter should conclude the City’s application of its Project Duration Ordinance complies with Chapter 245.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Nuckols", written over a horizontal line.

Tom Nuckols
Assistant County Attorney