ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2013-016 Lake Austin Approvals

Description: Consider an ordinance amending Title 25 of the City Code to make the Land Use Commission (Planning Commission or Zoning and Platting Commission) the review and granting body for certain approvals related to Lake Austin.

Proposed Language: See attached draft language.

Background: Initiated by Council Resolution 20130627-075

Current code designates the Parks and Recreation Board as the body responsible for reviewing and granting certain approvals related to docks, bulkheads, and shoreline access (in Chapter 25-2); navigation (in Chapter 25-7); and shoreline relocation and lake fill (in Chapter 25-8).

The proposed code change would replace the Parks and Recreation Board with the appropriate Land Use Commission (per 25-1-46, either Planning Commission or Zoning and Platting Commission) as the body responsible for reviewing and granting approvals related to docks, bulkheads, and shoreline access (in Chapter 25-2); navigation (in Chapter 25-7); and shoreline relocation and lake fill (in Chapter 25-8).

Staff Recommendation: Staff recommends the proposed code amendment.

Board and Commission Actions
August 27, 2013: Recommended by the Parks and Recreation Board on a 6-0 vote.

September 4, 2013: Recommended by the Environmental Board on a 5-0 vote.

September 17, 2013: To be reviewed by the Codes and Ordinances Subcommittee.

September 24, 2013: To be reviewed by Planning Commission.

Council Action
October 3, 2013: A public hearing has been set for City Council.

Ordinance Number: NA

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Current Code: Certain approvals 25-2, 25-7, and 25-8 are reviewed and granted by the Parks and Recreation Board.

Proposed Code: Certain approvals to 25-2, 25-7, and 25-8 will be reviewed and granted by the Land Use Commission (instead of Parks and Recreation Board).

ARTICLE 13. DOCKS, BULKHEADS, AND SHORELINE ACCESS.

§ 25-2-1171 APPLICABILITY.

(A) This article applies to a structure or development:

(1) in Lake Austin, Lady Bird Lake, or Lake Walter E. Long;

(2) along the shore of Lake Austin in the area below 504.9 feet above mean sea level;

(3) along the shore of Lady Bird Lake below 435 feet above mean sea level;

(4) along the shore of Lake Walter E. Long; or

(5) used for access to areas described in this Subsection.

(B) The building official, director of the Planning and Development Review Department [~~, and director of the Parks and Recreation Department~~] shall implement and enforce this article.

Source: Section 13-2-791(a) and (d); Ord. 990225-70; Ord. 031211-11; Ord. 20101209-075.

§ 25-2-1173 PERMIT REQUIRED FOR CONSTRUCTION.

(A) A person may not modify a shoreline or construct a dock, bulkhead, or shoreline access unless the person first obtains a site plan and building permit, as applicable, and pays the applicable permit fee set by ordinance.

(B) The building official or the director of the [~~Parks and Recreation Department~~] Planning and Development Review Department shall require the applicant to place an identification or registration tag on a dock. A person may not remove a tag placed under this subsection.

(C) A permit obtained under this section shall be prominently displayed at the construction site until the final inspection and approval by the building official.

(D) The director of the Planning and Development Review Department may not approve an application for a permit for the construction of more than two residential docks or other similar structures on a single lot zoned MF-1 or more restrictive, unless:

(1) the lot was platted and recorded before August 26, 1976, and perpetual rights to use the water frontage of the lot were granted or conveyed to one or more owners of other lots in the subdivision before June 23, 1979; or

(2) the [~~Parks and Recreation Board~~] Land Use Commission has approved a site plan that clusters the residential docks on one or more lots in the subdivision.

(E) If a permit is required under this section and is not obtained before construction begins, the required fee is increased by an amount established by ordinance. Payment of the additional fee does not relieve a person from complying with this Code.

(F) Where an inspection is required by state law, neither a Certificate of Compliance nor a final inspection may be issued for shoreline access unless the applicant has submitted an inspection report, signed by a QEI-1 inspector registered with the Texas Department of Licensing and Regulation, stating that all applicable state regulations have been met.

Source: Sections 13-2-791 and 13-2-794; Ord. 990225-70; Ord. 031211-11; Ord. 20101209-075.

§ 25-2-1175 LIGHTING AND ELECTRICAL REQUIREMENTS.

(A) A dock must be lighted as provided in this section and in compliance with Chapter 25-12, Article 4 *(Electrical Code)*. This section does not apply to a dock located on an inlet or slough, unless the dock is on Bee Creek or Bull Creek.

(B) This subsection applies to a dock that extends more than eight feet from the shoreline. In this subsection, the distance that a dock extends from a shoreline is measured perpendicular to the shoreline, and the shoreline length of a dock is the length of a dock measured parallel to the shoreline.

(1) A dock must be continuously lighted with amber lights between sunset and sunrise each day.

(2) A dock must have at least one light station. Except as otherwise provided in this subsection, the light station must be located on the end of the dock and on the side that is farthest from and parallel to the shoreline. The light must be visible to a properly approaching watercraft.

(3) A dock that extends 30 feet or more from the shoreline, or that has a shoreline length of 25 feet or more, must have at least one light station on each side of the dock that does not face the shoreline.

(4) This paragraph applies if the director of the [~~Parks and Recreation Department~~] Planning and Development Review determines that a dock described in Subsection (B)(3) may be a navigational hazard between sunset and sunrise.

(a) A dock that extends not more than 50 feet from the shoreline must have a light station half way between the shoreline and the end of the dock that is farthest from the shoreline.

(b) A dock that extends 50 feet or more from the shoreline must have light stations from the shoreline to the end of the dock at intervals of not more than 25 feet, except that a light station may not be located within 8 feet of the shoreline.

(c) A dock that has a shoreline length of at least 25 feet but not more than 50 feet must have a light station located at each end of the dock on the side farthest from the shoreline.

(d) A dock that has a shoreline length of 50 feet or more must have light stations located at intervals of not than 25 feet along its length.

Light stations are also required at each end of the dock on the side farthest from the shoreline.

(C) A light station required by this section must have a two-bulb fixture, with two working light bulbs rated between 7½ and 25 watts, inclusive. Light bulbs or bulb covers must be amber, and white light may not radiate from the fixture. Weatherproof lamp holders and junction boxes are required. Each light fixture must be wired with

a switch operated by a photoelectric cell so that the lights will operate automatically during the hours that the dock is required to be lighted by this section.

(D) Wiring on a dock must be enclosed in rigid conduit or weatherproof flexible conduit with appropriate fittings.

(E) If lights other than those required by this section are installed on a dock, only an amber navigation light may cast a beam of light outward from the dock.

(F) A dock that requires lights under this section must provide temporary navigation lights that meet the requirements of this section during construction and until the permanent navigation lights installed on the dock are working.

(G) If a dock does not comply with this section, the building official or other authorized city official shall post notice on the dock and shall notify the owner by mail of the violation. An offense under this section is punishable by a fine of not less than $200.

Source: Section 13-2-793; Ord. 990225-70; Ord. 031211-11.

§ 25-2-1176 REGULATIONS.

(A) A site plan must comply with this section. A city official may not approve for final inspection a structure that does not conform to the requirements of Title 25 of the City Code, including this section.

(B) A dock or other structure must be constructed so that it is not a hazard to navigation or safety.

(1) The director of the [~~Parks and Recreation Department~~] Planning and Development Review shall determine, after receiving the recommendation of the [~~Parks and Recreation Board~~] Land Use Commission, the distance that a proposed dock may extend into a body of water without constituting a hazard.

(2) A dock may not extend more than 30 feet from the shoreline unless the [~~Parks and Recreation Board~~] Planning Commission determines that the dock will not create a hazard and approves the construction of the dock.

(C) A fence may not extend into the water beyond the shoreline unless the fence was part of a commercial livestock operation, other than raising domestic pets, existing on April 17, 1994. A fence permitted under this subsection:

(1) must be constructed of smooth wire or mesh;

(2) may not extend more than 40 feet beyond the shoreline;

(3) must include a navigation buoy indicating “DANGER”, in accordance with the Texas Water Safety Act, installed at the end of the fence, unless the fence does not extend further beyond the shoreline than an immediately adjacent dock; and

(4) must be removed if the livestock operation ceases.

(D) Approval of the [~~Parks and Recreation Board~~] Land Use Commission is required for a structure, other than a retaining wall:

(1) to be constructed or altered within 10 feet of a side property line; or

(2) except as provided in Subsection (E), that has a width, measured parallel to the shoreline, greater than 20 percent of the shoreline width of the lot or parcel of land on which the structure is to be constructed.

(E) Subsection (D)(2) does not apply if :

(1) the lot was platted and recorded before August 26, 1976, and a perpetual right to use the water frontage of the lot was granted to the owner of another lot in the subdivision before June 23, 1979; or

(2) the [~~Parks and Recreation Board~~] Land Use Commission has approved a site plan that clusters the boat docks on one or more lots in the subdivision.

(F) The number of residential docks may not exceed:

(1) twice the number of lots in the subdivision that have lake frontage on Lake Austin or Lady Bird Lake; or

(2) the number of lots in the subdivision, if:

(a) the subdivision has a common area that fronts on Lake Austin or Lady Bird Lake; and

(b) a perpetual right to use the water frontage of the common area has been conveyed to a lot owner in the subdivision.

(G) This subsection applies to a marina area or common area.

(1) Except for a boat dock or a combined storage area on the water's edge, a permanent structure, including a parking lot, must be set back at least 100 feet from the shoreline.

(2) Sanitation facilities must be provided for all marina and picnic areas.

(a) Permanent sanitation facilities are required for a marina or common area with 10 or more boat slips.

(b) Septic tanks and sewage holding tanks may not be located within 100 feet of an area below the normal pool elevation.

(3) The facility operator shall provide for the on-site collection of garbage at the marina or common area.

(a) At least one garbage can with a capacity of at least 32 gallons is required for each four picnic units and for each four boat slips.

(b) The facility operator shall remove garbage in a timely manner.

(H) A business or a living quarter may not be constructed on a pier or similar structure extending into or above Lake Austin, Lady Bird Lake, or Lake Walter E. Long, except under a license agreement approved by the council.

(1) The [~~Parks and Recreation Board~~] Land Use Commission shall make a recommendation to the council on each license agreement.

(2) A structure built under a license agreement must comply with the lighting requirements of Section 25-2-1175*(Lighting And Electrical Requirements)*.

(I) Construction of a boat ramp is prohibited.

ARTICLE 3. REQUIREMENTS FOR APPROVAL.

§ 25-7-63 REVIEW BY [~~PARKS AND RECREATION BOARD~~] LAND USE COMMISSION OF CERTAIN SITE PLANS.

(A) This section applies to a site plan that includes a proposal to:

(1) modify the shoreline of Lake Austin, Town Lake, or Lake Walter E. Long; or

(2) dredge in or along that lake.

(B) Before the director may approve the site plan, the director must submit the site plan to the [~~Parks and Recreation Board~~] Land Use Commission.

(C) The [~~board~~] Land Use Commission shall review and comment on:

(1) the navigational safety of the proposed development; and

(2) the effect of the development on the recreational and natural character of the lake.

(D) The [~~board~~] Land Use Commission may develop specific criteria for determining:

(1) the navigational safety of a proposed development; or

(2) the effect of a proposed development on the recreational and natural character of Lake Austin, Town Lake, or Lake Walter E. Long.

Source: Section 13-6-14; Ord. 990225-70; Ord. 031211-11.

Division 4. Shoreline Relocation; Lake Fill.

§ 25-8-652 FILLS AT LAKE AUSTIN, TOWN LAKE, AND DECKER LAKE.

(A) Approval by the [~~Parks and Recreation Board~~] Land Use Commission is required to place fill in Lake Austin, Town Lake, or Lake Walter E. Long.

(B) A person must file a written application with the [~~Parks and Recreation Board~~] Land Use Commission for an approval under this section.

Source: Section 13-7-50; Ord. 990225-70; Ord. 031211-11.

BOARD/COMMISSION RECOMMENDATION

ENVIRONMENTAL BOARD

Recommendation Number: 20130904 005b

Consider an amendment to Land Development Code Section 25-2-Article 13 and 25-8 Variances to change responsibility from the Parks and Recreation Board to the Planning Commission for approval of any dock, bulkhead or shoreline. Amendment was initiated by City Council Resolution No. 20130627-074 based on the recommendations from the Lake Austin Task Force

WHEREAS, the Lake Austin Task force has recommended the City of Austin Park and Recreation Department no longer review the referenced Land Development Code sections.

Therefore, the Environmental Board recommends approval of the request for an amendment with the following Environmental Board conditions:

DRAFT

The following Land Development Code items would be reviewed by the Environmental Board first:

Land Development Codes:

25-2-1176 (B)(1)& (2)

25-2-1176(d)(2)

25-8-652

25-7-63

Other Land Development Code items go to Planning Commission directly.

Date of Approval: September 4, 2013

Record of the Vote [5-2] Board members Robin Gary and Jennifer Walker were absent.

Attest:

_____

RESOLUTION NO. 20130627-075

WHEREAS, Lake Austin is a reservoir on the Colorado River impounded by the Tom Miller Dam within the limits of the City of Austin with multiple governmental and quasi-governmental bodies having concurrent jurisdiction; and

WHEREAS, in 1945 the State of Texas granted to Austin its rights to all the land in the Colorado River within the City limits of Austin and certain rights to impound, divert, and use the waters of the Colorado River; and

WHEREAS, the City currently draws its drinking water from Lake Austin, which also is the sole water supply reservoir for many households and Municipal Utility Districts near Lake Austin; and

WHEREAS, the City has the authority to regulate a variety of commercial and other uses, activities, and development on and around Lake Austin for the health, safety, general order and welfare of the public as well as to promote environmental and natural resource conservation and sustainability; and

WHEREAS, on May 24, 2012, the Austin City Council created a Lake Austin Task Force (LATF) to address the impact that commercial, residential, and recreational activity has had on Lake Austin; and

WHEREAS, the ordinance that accompanied the May 2012 Council action required that requests for environmental variances under City Code Section 25-8-41 on behalf of a property abutting or within 500 feet of the shoreline of Lake Austin be heard by Planning Commission while the LATF did its work; and

WHEREAS, the LATF was directed to include in its recommendations whether the code changes made in the May 2012 ordinance regarding environmental variances should be repealed, amended, or left in place; and

WHEREAS, in 1940 the Austin City Council established a five-member Lake Austin Navigation Board to oversee local regulation of private and commercial watercraft operating on Lake Austin; and

WHEREAS, this responsibility was consistent with the Parks and Recreation Department's oversight of recreational activities; and

WHEREAS, the Navigation Board's role has evolved over time; and

WHEREAS, the Parks and Recreation Board exercises authority over certain development approvals on Lake Austin; and

WHEREAS, the LATF finalized its recommendations on June 3, 2013 but a report has not yet been completed and submitted to the City Council; and

WHEREAS, the LATF came to consensus in recommending:

- The Parks and Recreation Board should not decide development variance requests;
- The Lake Austin Residential District (LA) zoning category contains important environmental protections as befits property within the 1000-foot geographic designation from the shoreline, but these protections fall away when properties are rezoned. The City should address this issue;

- Staff should consider revising the process for variance review. The LATF further recommended that for the near future, requests for development variances should be determined by the Board of Adjustment rather than the Parks and Recreation Board, and all requests for environmental variances (including those from City Code Chapter 25-8 Critical Environmental Feature protections, shoreline relocation, lake fill, and construction on slopes) should be reviewed by the Environmental Board for a recommendation to the Zoning and Platting Commission; and

WHEREAS, when the LATF dissolved by operation of its enabling ordinance, temporary provisions regarding applicable variance review protocol for Lake Austin properties reverted back to the pre-May 2012 process; and

WHEREAS, the potential exists for projects to move forward in ways contrary to the process recommended by the diverse group of stakeholders who served on the LATF; **NOW, THEREFORE,**

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

The City Manager is directed to develop recommendations for preserving the environmental protections currently codified in the Lake Austin (LA) Residential District zoning for all properties within 1000 feet of the Lake Austin shoreline, regardless of the zoning for individual parcels, and to schedule these for Council action no later than September 1, 2013.

BE IT FURTHER RESOLVED:

Until such recommendations are codified, the City Manager is directed to either suspend rezoning properties from LA to a less-stringent zoning category, or to ensure that the environmental protections within the LA zoning are maintained in any proposed new zoning category.

BE IT FURTHER RESOLVED:

The City Manager is directed to consider a revision to the process for variance review requests from properties in proximity to Lake Austin whereby development variances be determined by the Board of Adjustment rather than the Parks and Recreation Board.

BE IT FURTHER RESOLVED:

For all properties within 1000 feet of Lake Austin shoreline, the Planning Commission shall act as the land use commission for dock, bulkhead, and shoreline variance requests granted under Chapter 25-2 (including Article 13) and environmental variance requests granted under Chapter 25-8 of the Land Development Code. If any code amendments or ordinance action be necessary to accomplish this direction, the City Manager is directed to initiate and present such items for Council action without delay.

ADOPTED: June 27, 2013 **ATTEST:** _____

Jannette S. Goodall
City Clerk