

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2013-011

Description:

Amending City Code Chapters 25-1 and 25-5 relating to vested development rights and use continuing rights under the Texas Local Government Code, and Chapter 24-4 and 30-2 relating to subdivision plats.

Background:

The proposed ordinance relates to the review and evaluation of “vested rights” claims, which means, in general terms, a claim by a landowner that permit applications for a development project are subject to regulations other than those in effect on the date the application is submitted. On March 28, 2013, the City Council adopted Ordinance No. 20130328-019 (See Attachment “A”), which repealed portions of the City’s vested rights regulations and initiated the development of a new vested rights ordinance. In preparing the ordinance, the Council directed the City Manager to ensure compliance with State law and to consider the procedures and ordinances adopted by other Texas cities. A comparison chart of vesting rights ordinances from other Texas City Codes is attached to this report as Attachment “F.”

Since October 8, 2013, City Staff has met with representatives of the development community and environmental community. Based on the input Staff has received from these stakeholders, Staff has revised its recommendation. Specific comments have been provided by the Real Estate Council of Austin (RECA) and representatives of the environmental community (See Attachments “G” and “H,” respectively. Staff has also included amendments to Chapter 25-4 and Title 30, regarding subdivision development within the City limits and the Extra Territorial Jurisdiction (ETJ) of Travis County.

Latest City Council Action:

May 22, 2014: Approved second reading of the ordinance (See Attachment “K”) with the following amendments:

- Part 2. Section 25-1-553, Managed Growth Agreements (MGA), June 6, 2014 draft ordinance pages 11-13. Established separate requirements for “prospective” and “retroactive” MGAs. An amendment was offered and accepted to allow prospective MGAs for sites of 10 acres in size under Section 25-1-533(B)(1)(d). Staff was directed to address language on phasing.
- Part 2. Section 25-1-552(D), Fair Notice Expiration, June 6, 2014 draft ordinance page 11. Replaced previous subsection language to clarify how projects based on a fair notice application expire.

- Part 2. Section 25-1-541(G), Vested Rights Determination, June 6, 2014 draft ordinance page 6. Required vested right petitions to be posted on the City's website in addition to posting of vested right determinations.
- Direction was given to Staff to work with Travis County on MGAs in the Extraterritorial Jurisdiction, and discuss changing language from the "date of approval" to the "date of submittal" with Travis County.

Departmental Comments:

The revised proposed post Planning Commission ordinance dated March 12, 2014 (See Attachment "B") includes review and decision-making procedures for evaluating the distinct types of vested rights provided for under Chapter 245 (See Attachment "C") and Section 43.002 (See Attachment "D") of the Texas Local Government Code. The ordinance also amends the rules applicable to permit expiration for dormant projects and adopts new expiration periods that would apply to projects started after the effective date of the ordinance. A copy of the current City dormant projects regulations is attached (Attachment "E").

The basic provisions of the proposed ordinance address these key provisions:

1. The ordinance covers the different kinds of "vested rights" protections afforded by Chapter 245 and Section 43.002 of the Local Government Code. (The latter deals specifically with continuing uses begun prior to annexation; the former is the general statute on vested development rights);
2. Establishes requirements for obtaining recognition of vested rights for a project, with an emphasis on providing information relevant to the nature, scope and intensity of the project and the project's development history;
3. Provides general criteria for reviewing vested rights claims and explains the factors that affect vested rights (e.g., whether a project has changed or been completed).
4. Requires a written decision by the director explaining the basis for a vested rights determination. A decision approving a vested rights claim must include the date that rights are determined to have accrued and any conditions necessary to ensure consistency with the original project for which vested rights are recognized.
5. Amends the dormancy requirements applicable to projects that are not subject to permit expiration dates.
6. Adopts new expiration periods to apply prospectively, for projects begun after adoption of the ordinance. Expiration periods are longer than under old project duration ordinance, avoid conflicts with existing site plan expiration periods, and provide for extensions.

7. Authorizes council to approve “project consent agreements” establishing the development regulations applicable to a project if: (1) a development’s vested rights are unclear; or (2) a developer with clearly established vested rights proposes a project more consistent with current regulations. Agreements cannot be considered unless recommended by the director or initiated by council.
8. Authorizes the director to adopt guidelines to help address common questions that arise in reviewing vested rights claims.

Addition Changes Recommended by Staff since October 8, 2013:

9. Part 2. Section 25-1-542, CRITERIA FOR APPROVAL: Add language to clarify rights that may exist under common law vested rights.
10. Part 2. Section 25-1-544: PROJECT CONSENT AGREEMENTS: Add language to recognize a proposed development agreement per Section 212.172 of the Local Government Code that relate to projects located in the ETJ.
11. Part 2. Section 25-1-552: EXPIRATION OF PROJECTS BEGUN ON OR AFTER _____ (*effective date the ordinance*): Changes the project expiration date associated with a preliminary plan to match the plan expiration date as it applies under Section 25-4-62 and Section 30-2-62 (applicable to the ETJ of Travis County). In addition, creates a project expiration date for a fair notice application of one year.
12. Part 2. Section 25-1-553: MANAGED GROWTH AGREEMENTS: Add a new section for Managed Growth Agreements (MGA) that must be filed under current regulations, located within the City’s zoning jurisdiction, not located within the Barton Springs Zone and at least 250 acres in size or partially located within a Regional Center or Town Center identified in the Growth Concept Map of the Imagine Austin Comprehensive Plan. It is the City Council’s decision to approve or deny a MGA after a Staff review and recommendation that is based on certain criteria.
13. Part 5. Section 25-1-2, Applicability of Regulations: Addresses the applicability of regulations to address vested rights in the Planning Jurisdiction.
14. Part 7: Section 25-2-62: EXPIRATION OF APPROVED PRELIMINARY PLAN: Establishes a uniform preliminary plan expiration date of five years from the date of approval, regardless of its geographic location within the Planning Jurisdiction (with the exception noted in #15 below).
15. Part 9: Section 30-2-062, Extension of Approved Preliminary Plan: Amends the Preliminary Plan expiration date for projects located within the ETJ portion of Travis County to be 5 years regardless of location, but only with the concurrent approval by the Travis County Commissioners Court.

Addition Changes Recommended by Staff since February 25, 2014:

16. Part 2, Section 25-1-531: Definitions: Deleted definition for "Plat Note."
17. Part 3. Section 25-1-553 MANAGED GROWTH AGREEMENTS: Added language under subparagraph (B) that excludes projects that require a variance, except for residential uses that don't require a site plan; and to the recommendation criteria under subparagraph (D) the determination whether or not the project is environmentally superior to the minimum environmental standards applicable to a project under Chapter 25-8 (Environment).
18. Part 3. Section 25-1-554, DORMANT PROJECTS: Renamed and renumbered previous dormant project section, and added new subparagraph (E) that states if the first permit in a series of permits for a project expires based on dormancy of the project, then it cannot form the basis of a vested right petition.

Revised Staff Recommendation:

Staff recommends approval of the proposed code amendment. See Attachment "B"

Planning Commission's Codes and Ordinance Subcommittee:

September 17, 2013: Forward amendment to the Planning Commission without a recommendation and with a request for an executive session. (Vote: 5-0)

Planning Commission Action:

August 13, 2013: Referred amendment to the Codes and Ordinance Subcommittee. (Vote: 5-0)

September 24, 2013: Approved staff requested postponement to October 8, 2013. (Vote: 7-0)

October 8, 2013: Approved the ordinance as request by Staff. (Vote: 8-0) See Attachment "I."

February 25, 2014: Approved postponement request from RECA and SOS. Item was postponed to 03-25-2014. (Vote: 9-0)

March 25, 2014: Approved postponement request from RECA and SOS. Item was postponed to 04-8-2014. (Vote: 9-0)

April 10, 2014: The motion to adopt staff's recommendation with language in 25-1-541(D), but adding that decision determinations should be published online with Findings of Fact; if an applicant is denied they do not have to pursue a variance prior to exhausting their administrative remedies. Strike the 250 acre minimum requirement for MGAs, nine (9) years for progress of completion no matter where the project is, starting at the date of application (not approval). Motion was made by Commissioner Brian Roark, Commissioner Richard Hatfield seconded the motion on a vote of 7-1; Chair Dave Anderson voted against the motion (nay), Commissioner Alfonso Hernandez was off the dais. (See Attachment "J")

Summary of Changes Recommended by Planning Commission on April 10, 2014:

Section 25-1-541(D)(2), at bottom of page 5 of 16. Add language requiring Findings of Fact in support of the vesting decision and identifies the applicable permit or fair notice on which the decision applies.

Section 25-1-541(F)-(G), at the top of page 6 of 16. Add language to clarify that a variance request is not required to exhaust administrative remedies for the purpose of a determination challenge and vested right determinations are available on the City of Austin website.

Section 25-1-551 (D) at the middle of page 10 of 16. Replace previous Staff recommended parts (a) and (b) under Section 25-1-551(D) (see Attachment "B") that addresses the ability to maintain an active site plan and pull necessary building permits to complete the site plan, including site plan extensions, even if a project expires. The recommended language states a permit submitted after a project expires constitutes a new project and subject to current code.

Section 25-1-552 (H), at the middle of page 12 of 16. Add a new paragraph that provides a nine (9) year project life provision.

Section 25-1-553(B)(4), at bottom of page 11 of 16. Delete the Staff recommendation to require a 250 acre minimum area requirement for Managed Growth Agreements (MGA). *(Note: references to regional and town centers designated by the Growth Concept Map were also deleted)*

Additional Departmental Comments:

Staff supports the Planning Commission's recent recommendation to add language requiring Findings of Fact in support of the vesting decision and identifying the applicable permit or fair notice on which the decision applies. In addition, Staff supports the Commission's recommendation to make vested rights determinations available on a City of Austin website.

Staff does not object to Planning Commission's recent recommendation to add language to clarify that a variance request is not required to exhaust administrative remedies for the purpose of a determination challenge. Nor does staff object to the nine (9) year project life that treats residential and commercial projects alike and recognizes a project starts at the date of application; however, should City Council approve the Planning Commission's recommendation, it would create potential conflicts between project life and site plan (permit) life unless Council retains the Staff recommended language in Section 25-1-551(D)(a)&(b) [see Attachment "B"].

Staff does not support the Planning Commission's recent recommendation to remove the minimum amount of land area required to consider an MGA. Staff believes there should be a minimum area requirement for a MGA since the purpose of locking in current regulations prospectively for an extended period of time is meant to address the nature of long range projects, such as Scofield Farms, Mueller, Southpark Meadows, The Domain and Avery Ranch. Concerns addressing project life for smaller civic uses, such as religious assembly uses may be

addressed by the Staff recommendation that allows administrative and Land Use Commission approved site plan extensions.

City Council Date and Action:

August 8, 2013: Set a public hearing for August 29, 2013. (Vote: 7-0)

August 29, 2013: Approved staff requested postponement to October 3, 2013 (Vote 7-0)

October 3, 2013: Approved staff requested postponement to October 17, 2013 (Vote: 7-0)

October 17, 2013: Approved staff requested postponement to November 7, 2013 (Vote: 7-0)

November 7, 2013: Withdrawn.

December 12, 2013: Approved staff/RECA requested postponement to Jan. 30, 2014 (Vote: 7-0)

January 30, 2014: Approved staff requested postponement to January 30, 2014 (Vote: 7-0)

March 6, 2014: Approved staff requested postponement to 04-10-2014. (Vote: 7-0)

April 10, 2014: Approved staff requested postponement to 04-17-2014. (Vote: 7-0)

April 17, 2014: Approved RECA requested postponement. Postponed to May 1, 2014. (Vote: 6-0, Mayor Pro-Tem Cole absent.)

May 1, 2014: The public hearing was conducted and the motion to close the public hearing and adopt the first reading of the ordinance recommended by the Planning Commission (April 10, 2014 version) with several amendments was approved on Council Member Spelman's motion, Council Member Morrison's second on a 6-1 vote. Mayor Leffingwell voted nay.

May 22, 2014: Adopt second reading of the ordinance for Divisions One and Two on Council Member Morrison and seconded by Council Member Spelman. Passed on a vote of 7-0.

Adopt second reading of the ordinance for Divisions Three with various amendments and direction to Staff to work with Travis County regarding MGAs in the ETJ. Passed on a vote of 6-0, with Council Member Martinez of the dais. An additional amendment was adopted second reading of the ordinance to include language to put vested rights applications on the website with determinations in a timely manner by Council Member Morrison and seconded by Council Member Spelman. Amendment passed on a vote of 7-0. Other direction was given to staff to discuss changing language from "date of approval" to "date of submittal" with Travis County.

Ordinance Number:

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