



MEMORANDUM

TO: Marisa Perales, Chair, and Members of the Environmental Commission

FROM: Andrea Bates, Environmental Program Coordinator
Watershed Protection Department

DATE: August 10, 2017

SUBJECT: Proposed Land Development Code Amendments

The Watershed Protection Department is proposing several amendments to the redevelopment exceptions and water quality control requirements in Chapter 25-8 of the Land Development Code (LDC). Six of the proposed amendments were presented to the Environmental Commission in April 2017 as part of a broader proposal; the Commission recommended that these amendments be deferred and processed separately to allow for further review. A seventh amendment, which pertains to the applicability of the redevelopment exceptions for all watersheds, was recently added by staff.

The proposed amendments fall into three categories:

1. Amendments to the Barton Springs Zone Redevelopment Exception

Amendments to the Barton Springs Zone Redevelopment Exception (BSZRE) are proposed to allow redevelopment of a portion of a site with proportionate water quality treatment and mitigation; allow multifamily residential properties to utilize the BSZRE; allow sites that previously contained unpermitted development to utilize the BSZRE; allow projects with civic land uses to be approved administratively; and encourage redevelopment projects to restore degraded waterways and critical environmental features.

The proposed amendments respond to City Council Resolution 20121213-066, which directed to staff to work with stakeholders to develop recommendations for improving both redevelopment opportunities and environmental protection within the Barton Springs Zone (see Attachment A). Similar amendments to the BSZRE were proposed with the WPO in 2013, but were deferred to a later date pending additional stakeholder input.

2. Amendments to the redevelopment exceptions for the urban and suburban and water supply watersheds

Two of the amendments to the BSZRE are also applicable to the redevelopment exceptions for the urban and suburban and water supply watersheds. Equivalent amendments are proposed to allow sites that previously contained unpermitted development to utilize the redevelopment exceptions, and to encourage redevelopment projects in the water supply watersheds to restore degraded waterways and critical environmental features.

3. An amendment to exempt some agricultural facilities from water quality control requirements

An amendment is proposed to reduce permitting complexity and costs for some types of agricultural development. The proposal would exempt agricultural improvements (like barns) from water quality control requirements on sites in urban and suburban watersheds with less than 20 percent gross impervious cover.

A summary of each proposed amendment, including the current status or concern to be addressed, the proposed improvement, and any anticipated impacts, is included in Attachment B. Draft language for each proposed amendment is included in Attachment C.

Public Review Process

The initial public review period for the proposed amendments ran from March 6 through 24, 2017. Staff held a meeting for all stakeholders on March 21 and a follow-up meeting with the Save Our Springs Alliance (SOS) on April 3. We received preliminary comments from several stakeholders, including SOS, the Real Estate Council of Austin (RECA), and individual members of the development community. The proposed amendments were presented to the Environmental Commission on April 5, along with an overview of preliminary stakeholder feedback. The Commission recommended that these amendments be deferred and processed separately to allow for further review. Staff reached out to all stakeholders and asked for additional feedback on these proposed amendments in May. On May 18, the City Council set a public hearing on the amendments for October 5. Finally, staff held a second stakeholder meeting with key environmental stakeholders on August 9.

Attachments

- A City Council Resolution No. 20121213-066
- B Summary of Proposed Code Amendments
- C Draft Markup of Proposed Code Amendments

RESOLUTION NO. 20121213-066

WHEREAS, properties built in and around the City of Austin during and prior to the 1980s may have substandard or no structural water quality controls and may therefore discharge untreated, uncontrolled urban runoff into waterways; and

WHEREAS, the City of Austin has enacted Section 25-8-27 (*Redevelopment Exception in the Barton Springs Zone*) of the City Code to encourage the redevelopment of older properties while providing significant new environmental protections; and

WHEREAS, the number, type, and location of properties benefitting from the redevelopment exception provided by Section 25-8-27 is limited, but could be amended to increase its use and concomitant environmental and community benefits; **NOW, THEREFORE,**

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

The City Manager is directed to work with stakeholders to develop recommendations for improving both redevelopment opportunities and environmental protection, and to report the recommendations to City Council not later than April 30, 2013.

In doing so, the City Manager is directed to consider:

- (1) the impact of expanding the application of 25-8-27 (*Redevelopment Exception in the Barton Springs Zone*) to include redevelopment of existing residential development in City watersheds inside and outside the Barton Springs Zone;

- (2) the impact of expanding the application of redevelopment exceptions in the City Code to include redevelopment of a portion of a site; and
- (3) other code amendments that could encourage redevelopment while providing environmental benefits in the Barton Springs Zone; and, if appropriate, in other areas of the City.

ADOPTED: December 13, 2012 **ATTEST:** Shirley A. Gentry
Shirley A. Gentry
City Clerk

Description	Type of Change	Current Status/Concern	Proposed Improvement	Anticipated Impacts	
				Advantages	Disadvantages
1. <i>§25-8-25/26/27, Redevelopment Exception in All Watersheds: Applicability</i>	Clarification	Current code language prevents sites with unpermitted development from ever using the redevelopment exception, regardless of whether the unpermitted development is removed. This punitive approach was not staff's intent when the language was added with the WPO.	Allow the redevelopment exceptions to be used if any development constructed without a permit after January 1, 1992 has been removed from the site and the area restored to pre-development conditions.	Prevents sites from taking advantage of illegal development while allowing a pathway to redevelopment if the site is restored.	None.
2. <i>§25-8-26 Redevelopment Exception in the Barton Springs Zone: Eligible Land Uses</i>	Policy	The BSZRE is only applicable to properties with existing commercial development, which limits its use.	Allow the BSZRE to be used for multifamily residential properties, with Council approval required for properties with more than 25 existing dwelling units.	Allows additional properties to use the BSZRE, which could result in additional on-site water quality controls, mitigation, and urban revitalization. Requiring Council approval ensures additional oversight for large multifamily properties, like those near the Barton Creek Greenbelt.	Some stakeholders expressed concern that land disturbance and increased activity on the redeveloped sites will outweigh the advantages of the water quality controls and mitigation.
3. <i>§25-8-26 Redevelopment Exception in the Barton Springs Zone: Partial Site Redevelopment</i>	Policy	Water quality treatment and mitigation are required for the entire site, which is a potential disincentive for redevelopment projects.	Allow redevelopment of a portion of a site with proportionate water quality treatment and mitigation. Require water quality treatment and mitigation to be provided for an impervious area twice the size of the redeveloped impervious area (up to a maximum of treatment for the entire site).	Allows for incremental redevelopment of larger sites, which could help achieve water quality retrofits and open space preservation on a shorter timescale. Providing water quality controls and mitigation for the entire site may be financially or otherwise infeasible (e.g., may require controls in the CWQZ). This provision restores the 2000 Redevelopment Exception partial site option eliminated by the WPO.	Some stakeholders were concerned that applicants would select only the easiest portions of a site to redevelop and never provide treatment and mitigation for the remainder; the proposed requirement for double treatment seeks to address this concern.

Description	Type of Change	Current Status/Concern	Proposed Improvement	Anticipated Impacts	
				Advantages	Disadvantages
4. <i>§25-8-26 Redevelopment Exception in the Barton Springs Zone: Water Quality Treatment Standard</i>	Clarification	Existing code language regarding the minimum water quality treatment standard is unclear.	Clarifies that water quality controls on the site must provide a level of water quality treatment that is equal to or greater than that which was previously provided.	Clarification of existing requirement.	None.
5. <i>§25-8-26 Redevelopment Exception in the Barton Springs Zone: Civic Use and Council Approval</i>	Policy	Redevelopment of properties with an existing civic use requires Council approval, but small-scale civic projects pose no greater risks than small-scale commercial projects, which are approved administratively.	Allow projects with civic land uses to be reviewed and approved administratively.	Simplifies the use of the BSZRE for small-scale civic projects; reduces permitting cost and time to complete. Large-scale projects would likely trigger Council review for other requirements (e.g., traffic counts, residential units, etc.).	None.
6. <i>§25-8-26/27 Redevelopment Exception in the Barton Springs Zone and Water Supply Watersheds: Setbacks from Sensitive Environmental Features</i>	Policy	Redevelopment may not increase non-compliance with creek buffer or environmental feature protections, but there is no incentive to restore degraded areas.	Encourage redevelopment to set back from waterways and critical environmental features (CEF) by offering one-to-one mitigation credit for removing impervious cover from and restoring a creek or CEF buffer, if approved by the Watershed Protection Department. Restoration criteria would be specified in the ECM. (Impervious cover removed from a creek or CEF buffer could be relocated elsewhere on the site.)	Provides incentive to restore lost natural function in environmentally sensitive areas adjacent to streams, karst features, and springs. Allowing on-site restoration as an option will not be a barrier to redevelopment.	Some owners will elect to leave development in these buffers. However, if this were a requirement, many owners would elect to not redevelop (thus no water quality controls or off-site mitigation land) rather than be required to lose existing development in these areas.
7. <i>§ 25-8-211/30-5-211 Water Quality Control Requirement</i>	Policy	Complying with water quality control requirements may be prohibitively expensive for farmers who wish to develop an agricultural improvement like a barn or storage building.	Exempt agricultural improvements from water quality control requirements if they are located in the desired development zone and the total of new and existing impervious cover on the site does not exceed 20 percent.	Reduces permitting complexity and construction expense for agricultural development.	Exempts new impervious cover from water quality regulations.

Previously adopted amendments to these sections have been incorporated as existing code. Other changes from the draft previously reviewed by the Environmental Commission (dated 3/3/17) are highlighted.

§ 25-8-25 - REDEVELOPMENT EXCEPTION IN URBAN AND SUBURBAN WATERSHEDS.

(A) This section applies to property located in an urban or suburban watershed that has existing development if:

- (1) ~~no unpermitted development occurred on the site any development constructed without a permit after January 1, 1992~~ **has been removed from the site and the area restored to pre-development conditions**, and
- (2) the property owner files a site plan application and an election for the property to be governed by this section.

[...]

§ 25-8-26 - REDEVELOPMENT EXCEPTION IN THE BARTON SPRINGS ZONE.

(A) This section applies to property located in the Barton Springs Zone that has existing commercial development ~~or existing residential development with greater than two dwelling units per lot~~ if:

- (1) ~~no unpermitted development occurred on the site any development constructed without a permit after January 1, 1992~~ **has been removed from the site and the area restored to pre-development conditions**, and
- (2) the property owner files a site plan application and an election for the property to be governed by this section.

(B) For property governed by this section, this section supersedes Article 13 (Save Our Springs Initiative), to the extent of conflict.

(C) In this section:

- (1) SEDIMENTATION/FILTRATION POND means water quality controls that comply with Section 25-8-213 (Water Quality Control Standards) or are approved under Section 25-8-151 (Innovative Management Practices); and
- (2) SOS POND means water quality controls that comply with all requirements of Section 25-8-213 (Water Quality Control Standards) and the pollutant removal requirements of Section 25-8-514(A) (Pollution Prevention Required).

(D) The requirements of this subchapter do not apply to the subdivision of property if at the time of redevelopment under this section subdivision and site plan applications are filed concurrently.

(E) The requirements of this subchapter do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:

- (1) The redevelopment may not increase the existing amount of impervious cover on the site.
- (2) The redevelopment may not increase non-compliance, if any, with Article 7, Division 1 (Critical Water Quality Zone Restrictions), Section 25-8-281 (Critical Environmental Features), Section 25-8-282 (Wetland Protection), or Section 25-8-482 (Water Quality Transition Zone).
- (3) The redevelopment must comply with Section 25-8-121 (Environmental Resource Inventory Requirement) and all construction phase environmental requirements in effect at the time of construction, including Chapter 25-8, Article 5 (Erosion and Sedimentation Control; Overland Flow) and Section 25-8-234 (Fiscal Security in the Barton Springs Zone).

- (4) The redevelopment must provide water quality treatment for either the entire site or for an untreated impervious area at least twice the size of the redeveloped impervious area, whichever is smaller, as prescribed by the Environmental Criteria Manual.
- (5) The water quality controls on the redevelopment site must provide a level of water quality treatment that is equal to or greater than that which was previously provided. At a minimum, a site with more than 40 percent net site area impervious cover must provide sedimentation/filtration ponds for the area required to be treated under Subsection (4). A site with 40 percent or less net site area impervious cover must provide SOS ponds for the area required to be treated under Subsection (4).
- (65) For a commercial or multifamily redevelopment, the owner or operator must obtain a permit under Section 25-8-233 (Barton Springs Zone Operating Permit) for both sedimentation/filtration ponds and SOS ponds.
- ~~(6) For a site with more than 40 percent net site area impervious cover, the redevelopment must have:
 - ~~(a) sedimentation/filtration ponds for the entire site; or~~
 - ~~(b) SOS ponds for a portion of the site, and sedimentation/filtration ponds for the remainder of the redeveloped site.~~~~
- ~~(7) For a site with 40 percent or less net site area impervious cover, the redevelopment must have SOS ponds for the entire site.~~
- ~~(78) The property owner must mitigate the effects of the redevelopment, if required by and in accordance with Subsection (H).~~
- (89) Redevelopment may not be located within the Erosion Hazard Zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.
- (F) City Council approval of a redevelopment in accordance with Subsection (G) is required if the redevelopment:
 - (1) includes more than 25 existing or proposed dwelling units;
 - (2) is located outside the City's zoning jurisdiction;
 - (3) is proposed on property with an existing industrial ~~or civic~~ use;
 - (4) is inconsistent with a neighborhood plan; or
 - (5) will generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.
- (G) City Council shall consider the following factors in determining whether to approve a proposed redevelopment:
 - (1) benefits of the redevelopment to the community;
 - (2) whether the proposed mitigation or manner of development offsets the potential environmental impact of the redevelopment;
 - (3) the effects of offsite infrastructure requirements of the redevelopment; and
 - (4) compatibility with the City's comprehensive plan.
- (H) Redevelopment of property under this section requires the purchase, ~~or~~ restriction, or restoration of mitigation land if the ~~site has required water quality treatment is provided by~~ a sedimentation/filtration pond.
 - (1) The combined gross site area impervious cover of the mitigation land and the portion of the ~~redevelopment site~~ required treatment area treated by sedimentation/filtration ponds may not exceed 20 percent of gross site area.

- (2) The mitigation requirement may be satisfied by:
- (a) paying into the Barton Springs Zone Mitigation Fund a non-refundable amount established by ordinance;
 - (b) transferring to the City in accordance with Paragraph (3) mitigation land approved by the director of the Watershed Protection Department within a watershed that contributes recharge to Barton Springs, either inside or outside the City's jurisdiction;
 - (c) placing restrictions in accordance with Paragraph (3) on mitigation land approved by the director of the Watershed Protection Department within a watershed that contributes recharge to Barton Springs, either inside or outside the City's jurisdiction; ~~or~~
 - (d) removing existing impervious cover from and restoring an on-site critical water quality zone, water quality transition zone, or critical environmental feature buffer, if approved by the director of the Watershed Protection Department and in accordance with the Environmental Criteria Manual; or
 - (e) a combination of the mitigation methods described in Subparagraphs (a) - (d), if approved by the director of the Watershed Protection Department.
- (3) A person redeveloping under this section shall pay all costs of restricting the mitigation land or transferring the mitigation land to the City, including the costs of:
- (a) an environmental site assessment without any recommendations for further clean-up, certified to the City not earlier than the 120th day before the closing date transferring land to the City;
 - (b) a category 1(a) land title survey, certified to the City and the title company not earlier than the 120th day before the closing date transferring land to the City;
 - (c) a title commitment with copies of all Schedule B and C documents, and an owner's title policy;
 - (d) a fee simple deed, or, for a restriction, a restrictive covenant approved as to form by the city attorney;
 - (e) taxes prorated to the closing date;
 - (f) recording fees; and
 - (g) charges or fees collected by the title company.
- (I) The Watershed Protection Department shall adopt rules to identify criteria for director approval under this section to ensure that the proposed mitigation, manner of development, and water quality controls offset the potential environmental impact of the redevelopment.

§ 25-8-27 - REDEVELOPMENT EXCEPTION IN THE WATER SUPPLY RURAL AND WATER SUPPLY SUBURBAN WATERSHEDS.

- (A) This section applies to property located in a water supply rural or water supply suburban watershed that has existing commercial development or existing residential development with greater than two dwelling units per lot if:
- (1) no unpermitted development occurred on the site any development constructed without a permit after January 1, 1992 has been removed from the site and the area restored to pre-development conditions, and
 - (2) the property owner files a site plan application and an election for the property to be governed by this section.

[...]

- (G) Redevelopment of property under this section requires the purchase, ~~or restriction,~~ or restoration of mitigation land.
- (1) The combined impervious cover of the mitigation land and the portion of the redevelopment treated by sedimentation/filtration ponds may not exceed 20 percent of gross site area if in a water supply rural watershed or 40 percent of gross site area if in a water supply suburban watershed.
 - (2) The mitigation requirement may be satisfied by:
 - (a) paying into the Water Supply Mitigation Fund a nonrefundable amount established by ordinance;
 - (b) transferring to the City in accordance with Paragraph (3) mitigation land approved by the director of the Watershed Protection Department within a water supply rural or water supply suburban watershed, either inside or outside the City's jurisdiction;
 - (c) placing restrictions in accordance with Paragraph (3) on mitigation land approved by the director of the Watershed Protection Department within a water supply rural or water supply suburban watershed, either inside or outside the City's jurisdiction; or
 - (d) removing existing impervious cover from and restoring an on-site critical water quality zone, water quality transition zone, or critical environmental feature buffer, if approved by the director of the Watershed Protection Department and in accordance with the Environmental Criteria Manual; or
 - (e) a combination of the mitigation methods described in Subparagraphs (a) - (ed), if approved by the director of the Watershed Protection Department.

[...]

§ 25-8-211 - WATER QUALITY CONTROL REQUIREMENT.

[...]

- (F) The water quality control requirements in this division do not require water quality controls for an agricultural improvement in an urban or suburban watershed if the total of new and existing impervious cover on the site does not exceed 20 percent of gross site area. For the purposes of this Section, agricultural improvement means a structure or facility that supports on-site agricultural operations, including facilities designed to process or store agricultural products produced on site. Agricultural improvements do not include facilities used for events or sales.

§ 30-5-211 - WATER QUALITY CONTROL REQUIREMENT.

[...]

- (F) The water quality control requirements in this division do not require water quality controls for an agricultural improvement in an urban or suburban watershed if the total of new and existing impervious cover on the site does not exceed 20 percent of gross site area. For the purposes of this Section, agricultural improvement means a structure or facility that supports on-site agricultural operations, including facilities designed to process or store agricultural products produced on site. Agricultural improvements do not include facilities used for events or sales.