



MEMORANDUM

TO: Mayor and City Council Members

FROM: AJL Andrew J. Linseisen, P.E., Assistant Director
Development Services Department

DATE: August 16, 2019

SUBJECT: Proposed Land Development Code Amendments – House Bill 3167

The attached ordinance proposes amendments to Titles 25 and 30 of the Land Development Code to implement changes necessitated by the passage of House Bill 3167 in the 86th Texas Legislative Session. HB 3167 is commonly referred to as a “shot clock” bill that mandates action to approve or deny within thirty (30) calendar days for subdivision development applications and a fifteen (15) day action deadline for subsequent updates to those applications. The legislation also mandates that the City’s failure to act on a subdivision within the specified timelines results in a subdivision application being automatically approved. Additionally, once a subdivision application has gone through initial review and received comments, the legislation prohibits staff from making new comments not provided in the original review. This legislation would also affect review and approval of subdivision applications in the City’s extraterritorial jurisdiction. The changes proposed by the ordinance will correspond to changes to administrative criteria and adjustments to internal staff processes. Collectively these changes will impact the administration of subdivision cases that require approval by the Land Use Commission under Section 212 of the Local Government Code including Preliminary Plans, Plats, and Subdivision Construction Plan applications.

As part of development of the ordinance staff has included modifications to the code that are intended to streamline and simplify review processes where possible to minimize the risk of automatic approval of applications that are not in compliance with codes and ordinances due to non-compliance with the state mandated timelines. Below is a summary of the significant changes to the Land Development Code that are included in the ordinance:

- Establish standard required timelines for action by staff or commission to reflect the state mandated deadlines for action within thirty (30) calendar days for initial submittal and fifteen (15) calendar days for submitted updates. Staff review timelines are adopted in administrative criteria and are proposed to be modified by emergency rules posting following council approval of the ordinance;
- In order to meet the thirty (30) day approval requirement of the legislation, allow

subdivision cases to be heard by either Zoning and Platting or Planning Commission without limitation to adopted neighborhood plan or geographic location;

- Clarify that following disapproval of a subdivision application by the commission, the application may be returned to commission for subsequent consideration following the submittal of updated information by the applicant;
- Adjust the application life for subdivision applications to be 90 calendar days for Preliminary Plans and Plats and one year for the associated Subdivision Construction Plans;
- Clarify the City's order of development process and establish requirements for the concurrent review of subdivision applications;
- Provide for administrative approval of a minor plat or replat without vacation of four lots or less;
- Provide for the approval of a flag lot variance as an administrative waiver;
- Modify the required notice provisions for subdivision applications to be in alignment with the changes implemented by HB 3167;
- Clarify that application life starts when the application is deemed complete and formally submitted for review. The thirty day mandated review timelines starts when an application has been accepted for formal submittal; and
- Establish an optional Project Assessment process focused on subdivision development process that may be utilized to inform the future review of a subdivision formal application. The Project Assessment is a required prerequisite submittal for subdivision applications that request or require waivers or variances to adopted code and criteria necessary to obtain a variance assessment prior to formal submittal of the application.

Concerns Created by HB 3167

Implementation of the changes mandated by HB 3167 will have a significant impact on the City's established processes and procedures related to the review and approval of subdivision application. Below is a summary of some of the more concerning outcomes that will result from implementation and the changes necessary to be in compliance with the legislation:

- If the director, Land Use Commission, or Commissioner's Court, fail to take required action on an application prior to the mandated approval deadlines in Chapter 212 and 232 of the Local Government Code, the application is considered approved by operation of law.
- Staff is prohibited from making new comments on an application after the initial review is complete. If a code requirement is missed on the first review it is missed forever if the applicant chooses not to make modifications. This limitation could result in applications being approved that are not in complete compliance with adopted code and criteria;
- The mandated timelines for Land Use Commission action result in decreased transparency for the citizens, stakeholders, and the commission. To meet the deadlines, notice of applications that will be on a commission agenda will be sent prior to the completion of staff review and staff providing a recommendation. The staff recommendation and case back up will be provided late to commission and will not be available to the public prior to the meeting;
- Land Use Commission actions are limited to approval, approval with conditions, or disapproval with reasons. Postponement of the application by the Land Use Commission

will result in approval by operation of law.

Staff has requested that Council approve this ordinance for emergency passage to be effective September 1, 2019 to have the ordinance in place prior to the September 1st effective date. Travis County Commissioners Court is scheduled to consider the ordinance implementing the proposed changes to Title 30 at their August 27th scheduled meeting completing the required process to implement the changes to Title 30 of the Land Development Code.

The Development Services Department will be conducting a stakeholder engagement event as a joint event with Travis County on the proposed implementation plan on August 29th. If you have questions or require additional information please contact me or Mitzi Cotton in the Law Department.

Cc: Spencer Cronk, City Manager
J. Rodney Gonzales, Assistant City Manager
Denise Lucas, Director Development Services