



Development
CITY OF AUSTIN
SERVICES DEPARTMENT

Building a Better and Safer Austin Together



**Staff Briefing - House Bill 3167
Joint Meeting – Planning Commission &
Zoning and Platting Commission**



September 5, 2019

Agenda

- Introductions
- Overview of House Bill 3167
- Overview of the Ordinance and Emergency Rules
- Outline of the proposed process changes
- Project Assessment
- Impact to Land Use Commission
- Question and Answer

Overview

What is House Bill 3167

- Passed in the 86th Texas Legislative Session to be effective on September 1st;
- Implements a mandatory uniform 30 calendar day initial action deadline for development applications;
- Subsequent reviews have a mandatory 15 calendar day action deadline;
- Responsive actions are limited to Approval, Approval with conditions, or Disapproval with reasons;
- Non-responsive reviews prior to the action deadline are deemed approved;
- Prohibits new comments on review of responsive submittals;
- Modifies the approval requirements for some plats;
- HB 3167 is applicable to applications approved under 212 and 232 of the Local Government Code which regulates Preliminary Plans, Final Subdivision Plats, and Subdivision Construction Plans;
- Site Development Permits (Site Plans) are not subject to the requirements of HB 3167, no changes are proposed to the site plan review process.

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Summary of Ordinance and Criteria Changes

- Summary of significant changes to Code and Criteria
 - An ordinance changing the Land Development Code (LDC) was passed on August 22, 2019, by the Austin City Council. Changes to Title 30 of the LDC were passed by Travis County Commissioners Court on August 27, 2019;
 - Initial review period is currently 20 business days – modified to the 30 calendar day deadline;
 - Update review period is currently 10 business days – modified to 15 calendar days;
 - Changes made to the application as part of update responses are limited to those necessary to address comments;
 - Changes to the application with an update response may not create other non-compliance with adopted codes;
 - Modified requirements to allow subdivision applications to be heard by either Land Use Commission (LUC) with no geographic limitation;
 - LUC and Travis Commissioner’s Court will act on the same day for Title 30 subdivisions;
 - Applications disapproved by LUC or Commissioner’s Court may be returned at a subsequent meeting for reconsideration if comments have been addressed and the application has not expired;

Summary of Ordinance and Criteria Changes

- Summary of significant changes to Code and Criteria
 - Application life has been shortened from 1 year to 90 days for Preliminary Plan and Plat applications. Subdivision Construction Plans remain one year;
 - Application life starts when deemed complete and formally submitted for review, currently begins a completeness check submittal;
 - Modification of concurrent review of subdivision applications, formal approval required of prerequisite applications in the order of process:
 - Preliminary – Commission approval
 - Final Plat – Administrative or Commission approval
 - Subdivision Construction Plans
 - Creation of prerequisite requirements for all applications;
 - Replat / Resubdivisions of up to 4 lots have been modified to be an administrative approval;
 - Flag lot commission variance has been modified to be an administrative waiver approved by staff;
 - Creation of a Project Assessment process that is available as the application to coordinate the review of prerequisite review items;

Summary of Ordinance and Criteria Changes

- Summary of significant changes to Code and Criteria
 - Rules to implement the Council approved ordinance are being adopted by Emergency Rule on Friday, August 30, to be effective on September 1, 2019;
 - The emergency rules includes changes to the following criteria:
 - Changes to review times and deadlines specified in the Building Criteria Manual, Sections 15.7 and 15.8;
 - Adds Section 15.9 of the Building Criteria Manual establishing the requirements of a Project Assessment application;
 - Modifies Sections 1.2.5 and 8.2.2 of the Drainage Criteria Manual;
 - Modifies Section 1 of the Utilities Criteria Manual related to Austin Energy Design Criteria;

Summary of Ordinance and Criteria Changes

- Other Outcomes and Changes
 - Modify requirements for posting of items to the Land Use Commission to acknowledge postings with staff recommendation pending and routine late backup for subdivision cases;
 - Creation of limited submittal windows for commission approved applications that link formal submittal to LUC and Commissioner's Court meeting dates to ensure action prior to the 30 and 15 day deadlines;
 - Completeness check submittal process has not changed, accepted each morning from 8:30-11:00;
 - Title 30 Single Office applications – Travis County will require a Code Compliance Summary document completed and certified by the applicant as part of the submittal;
 - Modification of the Completeness Check requirements for all applications to include requirements of the prerequisite processes;
 - Administrative applications approved by staff will be conditionally approved with comments, only the Commission may formally deny an application;
 - Non-responsive or late reviews are deemed approved at the deadline;
 - LUR or Commissioner's Court postponement would result in approval under state statute.

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Current Process Flow



Proposed Review Process

- Many non-code compliance reviews have been shifted to prerequisite reviews required prior to formal submittal;
- All applications that propose a waiver, variance, or prerequisite process approval are required to file a Project Assessment application to obtain a variance assessment / recommendation;
- Strict order of process will be required - Zoning, Preliminary Plan, Final Plat, Subdivision Construction Plans, Site Development Permit;
- Elimination of the concurrent review of applications will require final approval of previous prerequisite applications as a condition of filing for the next phase of permitting with limited exceptions by the Director;
- Applicant certification statement at submittal verifying prerequisite review requirements and that the application does not require discretionary approvals;

Proposed Review Process



Prerequisite Requirements For Formal Submittal

- Prerequisites Requirements - to be verified in Completeness Check
 - Statement and Certification of no variances or other identified prerequisite requirement;
 - Zoning - Final Council approval of all zoning processes, required or requested, including covenant amendments or terminations. Zoning verification form or copy of PUD ordinance;
 - Water and Wastewater Utility Service
 - a) Service Extension Request (SER) (Final administrative or Council approval);
 - b) Non-AWU – Will Serve letter and capacity confirmation prior to Preliminary Plan;
 - c) Non-AWU – Formal Service Commitment confirmation prior to Final Plat;
 - Chapter 245 Vested Rights
 - a) Applications for Vested Rights if requested (Final determination);
 - b) Request for compliance with “Other” regulations (Final Determination);
 - c) Mid-review request for vested rights or alternative ordinance requirements may result in a requirement for a new project application;

Prerequisite Requirements For Formal Submittal

- Prerequisite Requirements - to be verified in Completeness Check
 - Traffic Impact Analysis (TIA) (Administrative approval) - ETJ only;
 - TxDOT driveway permit – roadway location confirmation for Preliminary Plan;
 - Travis County street location confirmation required for Preliminary Plan;
 - Draft project phasing agreement for transportation improvements – Travis County;
 - Engineer's Sealed Fiscal Cost Estimate for Final Plat;
 - AULCC – If applicable, approval required prior to Construction Plan submittal;
 - Easement Vacations – Provide recommendation of support from the controlling easement owner (ATD, AE, WPD, AWU, etc.);
 - Non-standard Construction, i.e. retaining wall, included in a subdivision Construction Plan. Approval by Public Works Department at time of application for Subdivision Construction Plans;
 - Water Quality Payment In Lieu allowed/disallowed;

Prerequisite Requirements Requiring a Project Assessment

- Prerequisite Requirements – Requiring a Project Assessment
 - Variances from Land Development Code requirements
 - a. Environmental, SOS Amendment
 - b. Subdivision
 - c. Transportation
 - d. Heritage Tree
 - Waivers and administrative variances from criteria and discretionary approvals
 - a) Drainage Criteria Manual
 - b) Transportation Criteria Manual
 - c) Environmental Criteria Manual
 - d) Protected Tree
 - e) Utility Criteria Manual
 - f) Fire – Alternative Method of Compliance (AMOC) tied to subdivision layout and ROW widths or small lots

Prerequisite Requirements Requiring a Project Assessment

- Prerequisite Requirements – Requiring a Project Assessment
 - Request for Regional Stormwater Management Participation (RSMP)
 - Alternative Equivalent Compliance (AEC) for Water Quality
 - SOS limited adjustments
 - Redevelopment exceptions
 - Request for the use of non-standard Legal Documents
 - Real Estate Applications
 - a) Easement and ROW Vacation
 - b) Encroachment Agreement
 - c) License Agreement
 - Parkland – Request for fee in lieu of parkland dedication (Parkland Predetermination)
 - Parkland – Chapter 26 use or taking of parkland

Prerequisite Requirements Requiring a Project Assessment

- Prerequisite Requirements – Requiring a Project Assessment
 - Floodplain
 - a. Floodplain Variance (Council approval);
 - b. Delineation (when doing a study to NOT use City delineation);
 - c. Modification of adopted COA Floodplain Hydraulic Model;
 - d. Conditional Letter of Map Revisions (CLOMR);
 - e. Letter of Map Revisions (LOMR);
 - Small lots in City limits (AMOC);
 - Plat vacations;
 - Non-standard Construction, i.e. retaining wall, included in a subdivision Construction Plan.

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Project Assessment

- The Project Assessment requirements have been created by Administrative Rule located in Section 15.9 of the Building Criteria Manual;
- A Project Assessment is a separate application that include completeness review and an iterative review process up to 2 updates;
- Timelines for staff response are 21 calendar days for initial submittal and 14 calendar days for updates;
- All applicable review disciplines will be distributed for a high level review of potential code compliance and staff assessment and recommendations;
- A Project Assessment application can be considered a “Fair Notice Application” under the Vested Rights provisions of Chapter 245 of the Local Government Code;
- Staff assessment and recommendations for variances, waivers, and other non-standard prerequisite processes will be tied to the Project Assessment;
- Commission recommendations on variances may be obtained through the project assessment;
- Project Assessment applications have a 180 day life span. To utilize the staff variance assessments and recommendations a formal application must be filed prior to expiration;

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Impact to Land Use Commission

- Modified requirements to allow subdivision applications to be heard by either Land Use Commission (LUC) with no geographic limitation;
- Applications disapproved by LUC or Commissioner's Court may be returned at a subsequent meeting for reconsideration if comments have been addressed and the application has not expired;
- Staff will post subdivision items to the LUC agenda without complete backup or a staff recommendation;
- LUC are limited to approval, approval with conditions, or disapproval with reasons;
- If LUC acts to approve with conditions or disapprove with reasons, the commission must include a reference to a specific non-compliance with code or criteria. In general, this will be achieved via the inclusion of the staff report with the non-compliant provisions;
- Citations to applicable ordinances, laws, and regulations associated with each deficiency or grounds for disapproval identified in the comment report, as required by the Local Government Code, Section 212.0091(b);

Impact to Land Use Commission

- Postponement of an application by the LUC will result in automatic approval by operation of law;
- Variances and the subdivision application must be consider jointly, the question cannot be split to consider the variance without the subdivision;
- **These statements will be part of the Master Comment Report prepared by staff**

Specific Grounds for Disapproval:

Each numbered comment describes a non-compliant violation that must be remedied in order for the application to be approved. Notes provided under “Additional Information,” if any, are a courtesy intended to help identify potential design solutions, but are separate from the grounds for disapproval and not intended as an exhaustive list of options for remedying a violation.

Directions for Applicant Response:

To address the grounds for disapproval listed below, an applicant must submit a response to each comment that remedies the specifically identified violations without creating additional violations of the Land Development Code and/or Criteria Manuals. A response that fails to correct a violation, or which creates other violations, does not comply with the Land Development Code and is insufficient to address the grounds for disapproval.

Impact to Land Use Commission

- **Examples of Suggested Comment Format that could be used by LUC as conditions for approval or disapproval**

ENVIRONMENTAL COMMENTS:

One or more lots exceeds allowable impervious cover for the Suburban Watershed under LDC § 25-8-422 (*Water Quality Transition Zone*).

One or more lots exceeds allowable impervious cover under § 25-8-423 (*Uplands Zone*).

ZONING COMMENTS:

One or more lots lacks sufficient land area to meet the minimum lot size required for the MF-6 zoning district under LDC § 25-2-492 (*Site Development Regulations*).

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Question and Answer

Additional information will be available at

www.austintexas.gov/HB3167