

RULE NO.: R161-19.25

NOTICE OF RULE ADOPTION

ADOPTION DATE: February 28, 2020 FEB 28 2020 AM 10:30

By: Denise Lucas, Director
Development Services

The Director of the Department of Development Services has adopted the following rule. Notice of the proposed rule was posted on January 23, 2020. Public comment on the proposed rule was solicited in the January 23, 2020 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Department of Development Services, located at 505 Barton Springs Road, Suite 750, Austin TX 78704 or

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on February 28, 2020.

TEXT OF ADOPTED RULE

R161-19.25: Proposed revisions to the Building Criteria Manual (BCM) Recently enacted state law (House Bill 3167) establishes new review timelines and creates limitations on providing comments for subdivision applications authorized under Texas Local Government Code Chapter 212. House Bill 3167 was effective September 1, 2019. On August 23, 2019, Council adopted Ordinance Number 20190822-1 17 on an emergency basis, amending Title 25 and Title 30 of the Land Development Code as necessary to comply with the directives in House Bitt 3167. This rule was previously an emergency rule, Rule No. R161-19.25e. Emergency rules were necessary to administer, review, and comply with Ordinance Number 20190823-1 17. This permanent rule is necessary in order to streamline subdivision applications and ensure that the City is able to comply with the changes to state law. Changes made in this rule pertain to the Building Criteria Manual. (BCM).

SUMMARY OF COMMENTS

The Department of Development Services did receive a comments regarding Rule R161-19.25. The comment and response is attached. The department of development services has reviewed the comment and determined the rule does not need to be modified. A copy

of comments and responses is available for public inspection and copying at the following locations:

Department of Development Services, located at 505 Barton Springs Road, Suite 750, Austin TX 78704 or

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code. The authority to regulate design and construction requirements is established in Section 25-1-82 (Application Requirements and Expiration) and 30-1-61 (Administrative Rules). The authority under which the rule is adopted is established in Chapters 25-1 (General Requirements and Procedures), 25-4 (Subdivision), 30-1 (General Provisions and Procedures), and 30-1 (Subdivision Requirements) of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

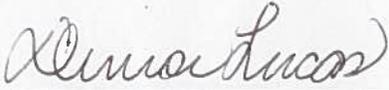
Notice that an appeal was filed and will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption R161-19.25 the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED



Denise Lucas, Director
Department

Date: 2/26/2020



Anne L. Morgan
City Attorney

Date: 2/26/2020

Comment received:

From: Chris Paladino

Date: 2/10/2020

I am writing to comment on proposed new section 15.10 – Administrative Completeness Review for Subdivision Applications.

Under HB3167, this entire section is illegal. I spoke at length with the office of the legislator who wrote HB3167, and NOTHING in the law allows for a municipality to create a “completeness review” process outside of the 30 day time frame allowed by HB3167.

Under the laws, you may design an application, and I fill it out. If it has five sections and I sip one, then sure, you can refuse to accept it. But as long as I complete the application, the 30 day clock starts the day I submit it. You cannot create a whole separate process!

If you find somehow the application is not “complete”, within the 30 day period allowed by HB3167 you can get back to the applicant and (1) cite what is missing, and (2) cite the code that requires the missing information. Your check for “completeness” is part of the review process you need to set up under the 30 day rule.

I am already preparing to sue the City to have your entire completeness check process declared illegal under B3167. Please don't make me waste the time and money.

Staff response:

Thank you for your feedback regarding the rules that were developed in accordance with City code and in response to the state law known as HB3167. The Development Services Department recognizes there may be different legal interpretations of each state law enacted by the legislature. The City's position is that the proposed rules comply with state law.

**Proposed Building Criteria Manual Rules
Associated with HB3167 Changes**

Location: Section 15.7 Review Times

Proposed Language:

15.7 - REVIEW TIMES

Review Schedule in business and calendar days for review processes within the Land Development Code.

Review times for applications and processes	Business days after application
Title 25-1 General Requirements and Procedures	
Development Assessment review [25-1-62]	15
<u>Administrative Completeness Review Notice [Subdivision Application Requirements and Expiration 25-1-83]</u>	<u>10</u>
Title 25 Subdivisions	<u>Calendar days after application</u>
<u>Project Assessment initial analysis report [Project Assessment 25-1-63]</u>	<u>21</u>
<u>Project Assessment update analysis report [Project Assessment 25-1-63]</u>	<u>14</u>
Preliminary Plan <u>initial</u> review [25-4-56(C)] [Subdivision Application Requirements and Expiration 25-1-83], [Action Within 30 Days 25-4-32]	20 <u>30</u>
Plat <u>initial</u> review [25-4-82(B)] [Subdivision Application Requirements and Expiration 25-1-83], [Action Within 30 Days 25-4-32]	18 <u>30</u>
<u>Subdivision Construction Plan initial review [Subdivision Application Requirements and Expiration 25-1-83], [Action Within 30 Days 25-4-32]</u>	<u>30</u>
Notification of plat determination [25-4-82(C)] <u>Preliminary Plan update review [Subdivision Application Requirements and Expiration 25-1-83], [Action Within 15 Days After Applicant Response 25-4-39]</u>	20 <u>15</u>
Notification of plat determination [25-4-82(E)] <u>Plat update review [Subdivision Application Requirements and Expiration 25-1-83], [Action Within 15 Days After Applicant Response 25-4-39]</u>	10 <u>15</u>
<u>Subdivision Construction Plan update review [Subdivision Application Requirements and Expiration 25-1-83], [Action Within 15 Days After Applicant Response 25-4-39], [Updates to Application for Subdivision Construction Plans 25-4-100]</u>	<u>15</u>

Title 25 Site plans	<u>Business days after application</u>
Notification of site plan determination [25-5-114(A)(1)]	20
Notification of small project site plan determination [25-5-114(A)(2)]	7
Notification of site plan update determination [25-5-114(A)(3)]	10
Site plan Review Report 25-5-143(A)	18
Site plan Review Report Notification 25-5-143(B)	20
Site plan Review of initial update to meet Commission-imposed conditions 25-5-148(B)	10
25-11-63 Building, Demo, and Relocation Permit Review periods	
Type of Permit	
1) Commercial buildings, new construction	25
2) Commercial buildings, remodeling and finishouts	15
3) Residential, new construction	15
4) Residential, remodeling of a complying structure	5
5a) Residential, remodeling of a noncomplying structure	5
5b) Residential, additions to a noncomplying structure	15
6) Sign, other than a nonconforming off-premise sign	10
7) Replacement of nonconforming off-premise sign	10
8) Repair of nonconforming off-premise sign	10
9) Demolition	5
10) Relocation	5

Location: Section 15.8 Review Times

Proposed Language:

15.8 - REVIEW TIMES

Review Schedule in business and calendar days for review processes within the Land Development Code.

Review times for applications and processes	<u>Business days after application</u>
<u>Administrative Completeness Review Notice [Subdivision Application Requirements and Expiration 25-1-83]</u>	<u>10</u>

Title 30 Subdivisions	<u>Calendar days after application</u>
<u>Project Assessment initial analysis report [Project Assessment 30-1-73]</u>	<u>21</u>
<u>Project Assessment update analysis report [Project Assessment 30-1-73]</u>	<u>14</u>
<u>Preliminary Plan initial review [30-2-56(C)] [Application Requirements 30-1-113], [City Action Within 30 Days 30-2-32], [County Action Within 30 Days 30-2-33]</u>	20 <u>30</u>
<u>Preliminary Plan update review [30-2-56(E)] [Action Within 15 Days After Application Response 30-2-41]</u>	10 <u>15</u>
<u>Plat initial review [30-2-82(B)] [Application Requirements 30-1-113], [City Action Within 30 Days 30-2-32], [County Action Within 30 Days 30-2-33]</u>	18 <u>30</u>
<u>Plat update review [Action Within 15 Days After Application Response 30-2-41]</u>	<u>15</u>
<u>Notice of plat determination [30-2-82(C)] [Application Requirements 30-1-113], [City Action Within 30 Days 30-2-32], [County Action Within 30 Days 30-2-33]</u>	20 <u>30</u>
<u>Notice of plat determination update [30-2-82(E)], [Action Within 15 Days After Application Response 30-2-41]</u>	10 <u>15</u>
<u>Subdivision Construction Plan initial review [Application Requirements 30-1-113], [City Action Within 30 Days 30-2-32]</u>	<u>30</u>
<u>Subdivision Construction Plan update review [Application Requirements 30-1-113], [Action Within 15 Days After Application Response 30-2-41]</u>	<u>15</u>

New Section: Section 15.9 Project Assessment

Proposed Language:

15.9 – Project Assessment

15.9 – Project Assessment

(A) General Background. Project Assessments, as described below, are used to obtain an analysis report from the City of Austin regarding how City development regulations apply to a proposed subdivision project. The process is designed to help applicants evaluate the development potential of a project in advance of submitting a fully designed subdivision. A Project Assessment is not a final determination of applicable regulations and does not authorize construction.

(B) Project Assessment. If an applicant plans to submit a project for review under current regulations, a Project Assessment can be used to obtain comments from staff regarding any

issues with the project and to obtain recommendations applicable to the project for a period of 180 calendar days.

(1) Required Submittals; Administrative Completeness Review.

(a) An application for a Project Assessment must follow the procedures outlined in Section 15.10 (Administrative Completeness Review) in order to be reviewed by staff.

(2) Effect of Project Assessment. If a Project Assessment is accepted for the purposes of analysis and review:

(a) Staff Comments. Staff will provide comments and recommendations, outlining any deficiencies with respect to:

i. The following requirements of Title 25, Title 30 or other applicable regulations:

- Impervious Cover Limits;
- Critical Water Quality Zones and Water Quality Transition Zones;
- Slopes, Grading, Cut and Fill;
- Floodplain Delineation and Modification;
- Trees and Vegetation;
- Critical Environmental Features;
- Water Quality, Drainage Controls and, Regional Stormwater Management Program (RSMP);
- Street Extensions and Block Lengths;
- Alternative Street Standards and Private Streets;
- Site Access, Connectivity, and Sidewalks;
- Traffic Impact Analysis;
- Utility Services;
- Parkland Dedication;
- Requirements for Waivers and Variances; and
- Real Estate documentation.

(b) Binding 180-Day Period. The following rules apply to any subdivision application for the identified project that is accepted within 180 calendar days from the date that the Project Assessment analysis report is issued:

i. Comments and recommendations issued under Paragraph (2)(a), above, are binding and cannot be rescinded or substantially modified if the project has not been materially changed.

ii. No changes to applicable rules or regulations apply, except for those exempted from vested rights protections under Local Government Code § 245.004.

(c) An applicant may not file more than 2 updates to a Project Assessment.

(d) Withdrawal and resubmittal of a Project Assessment is not permitted.

- (e) Expiration. A Project Assessment expires if a subdivision application is not accepted for review within the binding 180 calendar day period.
 - (f) The review of related subdivision applications that require discretionary approvals such as preliminary plan, plat, subdivision construction, cannot be accepted until required prerequisites have been provided and a required Project Assessment analysis has been completed and related variance / waiver recommendations have been provided. Related subdivision applications must follow the order of process and shall not be reviewed concurrently unless authorized by the Director.
- (C) Project Assessment + Vested Rights Determination — Projects Submitted for Review under Older Regulations. If an applicant wants a Project Assessment to be reviewed under Older Regulations, the applicant must first follow the process established in Chapter 25-1, Article 12 (Vested Rights) to obtain a Vested Rights Determination. Once a Vested Rights Determination has been obtained, staff will make comments based on the City regulations in effect on the date established by the Vested Rights Determination.

New Section: Section 15.10 Administrative Completeness Review for Subdivision Applications
Proposed Language:

15.10 – Administrative Completeness Review for Subdivision Applications

A) The responsible director or single office may not accept a project assessment, preliminary plan, plat and subdivision construction application for filing unless the application is determined to be administratively complete in accordance with this section.

B) The responsible director shall accept an application as complete for filing not later than 45 calendar days after the application is submitted for administrative completeness review and if the applicant has:

(1) Paid the required fee; and

(2) Provided the information required to be included in the application, consistent with requirements adopted under Sections 25-1-63 (Project Assessment); 25-1-83 (Subdivision Application Requirements and Expiration); 30-1-73 (Project Assessment); 30-1-113 (Application Requirements).

C) 10-Day Deficiency Notice.

(1) If an application is determined to be incomplete, the responsible director shall provide the applicant a written explanation identifying the deficiencies, and the information required to complete the application, within 10 business days after receipt of the application for administrative completeness review.

(2) The responsible director may, as provided in Section 25-1-83 (Subdivision Application Requirements and Expiration) or 30-1-113 (Application Requirements),

allow an applicant to omit required information from an application if the director determines that the information is not material to a decision on the application.

D) 45-Day Expiration. An application will expire if the application does not meet the filing requirements on or before the 45th calendar day after the application is submitted for administrative completeness review. An applicant may submit additional information required to complete an application at any time before the 45th calendar day.

Code Authority: City Code §Sec. 25-1-61 (Order of Process), § Sec. 25-1-63 (Project Assessment); § Sec. 25-1-82 (Non-Subdivision Application Requirements and Expiration); § Sec. 25-1-83 (Subdivision Application Requirements and Expiration); § Sec. 25-1-534 (Contents of Vested Rights Petition); § Sec. 25-1-535 (Fair Notice Application); § Sec. § 25-1-536 (Completeness Review For Vested Rights Petition); § Sec. 25-4-35 (Board and Commission Review of Requests Associated with Subdivision Application); § Sec. 25-4-36 (Variance Filing and Consideration); § Sec. 30-1-73 (Project Assessment);§ Sec. 30-1-113(Application Requirements).

**Proposed Drainage Criteria Manual
Rules Associated with HB 3167 Changes**

Purpose: Clarify what triggers a software waiver.

Location: Section 1.2.5 – Computations

Proposed Language:

1.2.5 - Computations

Computations to support all drainage designs shall be submitted to the appropriate City departments for review. The computations should be in such form as to allow for timely and consistent review and also to be made a part of the permanent City record for future reference. All computations submitted shall be certified by a professional engineer registered in the State of Texas.

The City of Austin maintains and makes available to the public engineering models for floodplain and storm drain analysis. The models maintained and distributed by the City have been developed in the computer simulation packages listed in the following table. The City maintains licenses and expertise in these computer simulation packages. Drainage studies based on computer simulation packages other than those listed in the table and any studies based on two-dimensional model simulations must receive a waiver approved by the Director of the Watershed Protection Department. Applicants submitting studies based on versions of the software listed in the table that are not the latest available versions should coordinate with the Watershed Protection Department prior to submittal.

City of Austin Standard Engineering Models for Drainage Analysis and Design

<u>Hydrologic Analysis for Floodplain Studies</u>	<u>HEC-HMS</u>
<u>Hydraulic Analysis for Floodplain Studies</u>	<u>HEC-RAS</u>
<u>Detention Pond Design</u>	<u>HEC-HMS, PondPack</u>
<u>Storm Drain Analysis and Design (Steady State)</u>	<u>StormCAD</u>
<u>Storm Drain Analysis and Design (Unsteady State)</u>	<u>CivilStorm</u>

Purpose: Clarify RSMP submittal requirements

Location: Section 8.2.2 – Participation Guidelines B. Participation Requirements

Proposed Language:

B. Participation Requirements.

Prior to a formal request for RSMP participation each applicant shall request a meeting with the Watershed Protection Department to evaluate the feasibility of RSMP participation and the type of potential participation. For Project Assessments, the Watershed Protection Department shall provide a recommendation on RSMP participation based on the feasibility meeting and the preliminary engineering analysis provided by the applicant. [It is required that each] Each RSMP applicant shall submit documentation that a feasibility meeting was held, a copy of the RSMP recommendation from the Project Assessment, a completed request RSMP application form, and an engineering submittal supporting the application to the Watershed Protection Department at the time of preliminary plan submittal or site plan submittal. To view the request form and a check list for the engineering submittal, please refer to the RSMP program link in the Watershed Protection page of the City of Austin's website at www.austintexas.gov/RSMP.

In order to participate in the program the applicant must satisfy all of the following conditions:

1. The intervening drainage system from the site to the tributary or main branch of the downstream mapped floodplain must have the capacity to provide for the fully developed 100-year storm from the entire drainage area. If the downstream systems are undersized or downstream flooding conditions exist, RSMP participation may be approved if it can be verified there will be no additional adverse flooding impact to downstream properties for storm events up to and including the 100-year storm.
2. The submitted engineering analysis must include a certified statement by a licensed engineer in the State of Texas that no additional adverse flooding impacts to other property will occur as a result of the proposed improvements.
3. An easement for unconditional conveyance of the fully-developed 100-year flood event from the site to the main branch or tributary of the watershed must be either in place, or acquired before participation is allowed.