

STAFF RECOMMENDATIONS

Item #94
5/19/22
CPO

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE TITLE 25 RELATING TO REGULATION OF PUBLIC MOBILITY PROJECTS IN THE RIGHT-OF-WAY; AND ESTABLISHING AN OPTIONAL PAYMENT RELATED TO WATER QUALITY CONTROLS FOR PUBLIC MOBILITY PROJECTS IN THE RIGHT-OF-WAY.

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

PART 1. City Code Section 25-1-21 (*Definitions*) is amended to add a new definition for “public mobility project” and to renumber the subsequent definitions accordingly:

- (88) PUBLIC MOBILITY PROJECT means a transportation project, including a multi-use trail, rail or transit line, or street, funded by a public entity and located on publicly owned land or in the right-of-way or a public easement.

PART 2. City Code Section 25-1-112 (*Fiscal Security*) is amended to add a new Subsection (F) to read as follows:

- (F) A public mobility project in the right-of-way is not required to post fiscal security under this title.

PART 3. Section 1.2.4. (*Exemptions*) of City Code Chapter 25-2, Subchapter E is amended to read as follows:

1.2.4. Exemptions.

- A. General Exemptions. Except as otherwise provided in this Subchapter, the following types of development are exempt from the requirements of this Subchapter:
 - 1. Development that does not require a site plan under Chapter 25-5, except that Section 2.5 (*Exterior Lighting*) shall apply;
 - 2. Development in the following zoning districts:
 - a. Agricultural (AG) district;
 - b. Aviation (AV) district; and
 - c. Traditional neighborhood (TN) district;

- 30 3. Development built pursuant to the overlay district provisions of the
31 University Neighborhood Overlay (UNO) district;
- 32 4. Development of a public primary or secondary educational facility;
- 33 5. Development built pursuant to the Robert Mueller Municipal Airport
34 Redevelopment Plan;
- 35 6. Development of an industrial use or unmanned communication
36 services, construction sales and service, drop-off recycling collection
37 facility, equipment repair or scrap and salvage services use that is not
38 located on a Core Transit Corridor;
- 39 7. Interior remodeling of a building.
- 40 8. Development for which public access is prohibited due to health,
41 safety and welfare reasons;
- 42 9. Development of a warehouse if less than 25% of the gross floor area
43 is used for a non-industrial use;
- 44 10. Sidewalk, shared use and urban trail projects managed by the City of
45 Austin and processed under the City's General Permit program which
46 are undertaken for the purpose of bringing existing facilities into
47 compliance with the Americans With Disabilities Act;
- 48 11. A public mobility project in the right-of-way; and
- 49 12. Development built pursuant to any of the following adopted
50 regulating plans:
 - 51 a. Transit-Oriented District Station Area Plan;
 - 52 b. North Burnet/Gateway (NBG) District;
 - 53 c. East Riverside Corridor;
 - 54 d. Waller Creek District;
 - 55 e. Downtown Austin Plan; or

f. Airport Boulevard Corridor Plan.

PART 4. Subsections (B) and (D) of City Code Section 25-8-42 (*Administrative Variances*) are amended to read as follows:

(B) The director of the Watershed Protection Department may grant a variance from a requirement of:

(1) Section 25-8-261 (*Critical Water Quality Zone Development*), only if:

- (a) necessary to protect public health and safety, or if it would provide a significant, demonstrable environmental benefit, as determined by a functional assessment of floodplain health as prescribed by the Environmental Criteria Manual,
- (b) necessary to allow an athletic field in existence on October 28, 2013, to be maintained, improved, or replaced,
- (c) necessary to allow an athletic field to be located in an area not otherwise allowed under Section 25-8-261(B)(5), or
- (d) necessary to allow a hard surfaced trail to be located in an area not otherwise allowed under Section 25-8-261(B)(3);

(2) Section 25-8-261 (*Critical Water Quality Zone Development*), for development within an urban watershed, only if the proposed development:

- (a) is located not less than 25 feet from the centerline of a waterway,
- (b) is located outside the erosion hazard zone, unless protective works are provided as prescribed in the Drainage Criteria Manual,
- (c) does not increase non-compliance, if any, with Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), Section 25-8-281 (*Critical Environmental Features*) or Section 25-8-282 (*Wetland Protection*), and

84 (d) restores native vegetation and soils if development is removed
85 from the Critical Water Quality Zone;

86 (3) Subsection 25-8-262(B) (*Critical Water Quality Zone Street*
87 *Crossings*), only outside the Barton Springs Zone;

88 (4) Section 25-8-281 (*Critical Environmental Features*);

89 (5) Section 25-8-322 (*Clearing for a Roadway*);

90 (6) Section 25-8-341 (*Cut Requirements*) or Section 25-8-342 (*Fill*
91 *Requirements*), for a cut or fill of not more than eight feet in the
92 desired development zone and, for a public primary or secondary
93 educational facility, within the desired development zone or the
94 drinking water protection zone;

95 (7) Subsection 25-8-343(A) (*Spoil Disposal*);

96 (8) Section 25-8-365 (*Interbasin Diversion*);

97 (9) Subsection 25-8-392(B)(6) (*Uplands Zone*), Subsection 25-8-
98 392(C)(6) (*Uplands Zone*), Subsection 25-8-423(D) (*Uplands Zone*),
99 or Subsection 25-8-453(E) (*Uplands Zone*).

100 (D) The director of the Watershed Protection Department may grant a variance
101 described in Subsection (B) only after determining that development in
102 accordance with the variance meets the objective of the requirement for
103 which the variance is requested and:

104 (1) for property in the Barton Springs Zone, the variance will result in
105 water quality that is at least equal to the water quality achievable
106 without the variance;

107 (2) for a variance from Section 25-8-261(B)(5), that the proposed work
108 on or placement of the athletic field will have no adverse
109 environmental impacts;

110 (3) for a variance from Section 25-8-281, that the proposed measures
111 preserve all characteristics of the critical environmental feature;

- 112 (4) for a variance from Section 25-8-341 or Section 25-8-342 the cut or
113 fill is not located on a slope with a gradient of more than 15 percent or
114 within 100 feet of a classified waterway;
- 115 (5) for a variance from Section 25-8-343(A), use of the spoil provides a
116 necessary public benefit. Necessary public benefits include:
- 117 (a) roadways;
- 118 (b) stormwater detention facilities;
- 119 (c) public or private park sites; and
- 120 (d) building sites that comply with Section 25-8-341 (*Cut*
121 *Requirements*), Section 25-8-342 (*Fill Requirements*), and
122 Chapter 25-7 (*Drainage*); and
- 123 (6) for a variance from Section 25-8-365, there are no adverse
124 environmental or drainage impacts;
- 125 (7) for a variance from Subsection 25-8-392(B)(6), Subsection 25-8-
126 392(C)(6), Subsection 25-8-423(D), or Subsection 25-8-453(E), the
127 variance:
- 128 (a) is the minimum deviation needed to provide necessary
129 improvements for a public mobility project in the right-of-way;
130 and
- 131 (b) does not create significant adverse environmental impacts.

132 **PART 5.** City Code Section 25-8-211 (*Water Quality Control Requirement*) is amended
133 to add a new Subsection (F) to read as follows:

- 134 (F) For a public mobility project in the right-of-way, the calculation of
135 impervious cover for compliance with Subsection (B)(3) or Subsection (E)
136 in any watershed shall:
- 137 (1) be determined on a watershed basis for development applications that
138 span multiple watersheds; and

139 (2) deduct existing impervious cover that is removed by the same project
140 if the area with removed impervious cover is:

141 (i) decompacted and revegetated as prescribed in the
142 Environmental Criteria Manual and the Standard Specifications
143 Manual; and

144 (ii) located within the same watershed.

145 **PART 6.** City Code Section 25-8-214 (*Optional Payment Instead of Structural Controls*
146 *in Urban Watersheds*) is amended to amend the Section heading, to add new Subsections
147 (E) through (G), and to read as follows:

148 **§ 25-8-214 OPTIONAL PAYMENT INSTEAD OF STRUCTURAL CONTROLS**
149 **~~[IN URBAN WATERSHEDS].~~**

- 150 (A) The director of the Watershed Protection Department shall identify and
151 prioritize water quality control facilities for the urban watersheds in an
152 Urban Watersheds Structural Control Plan. The Environmental Board shall
153 review the plan in January of each year.
- 154 (B) An Urban Watersheds Structural Control Fund is established for use in the
155 design and construction of water quality control facilities in the urban
156 watershed.
- 157 (C) Instead of providing the water quality controls required under Section 25-8-
158 211 (*Water Quality Control Requirement*), in an urban watershed an
159 applicant ~~[a developer]~~ may request approval to deposit with the City a
160 nonrefundable cash payment, based on a formula established by the council.
161 The director shall review the request and accept or deny the request based on
162 the standards in the Environmental Criteria Manual.
- 163 (D) The director shall deposit a payment made under Subsection (C) ~~[this~~
164 ~~section]~~ in the Urban Watersheds Structural Control Fund.
- 165 (E) A Suburban and Water Supply Watersheds Structural Control Fund is
166 established for use in the design and construction of water quality control
167 facilities.

168 (F) For a public mobility project in the right-of-way that is located in a
169 suburban, water supply suburban, or water supply rural watershed, an
170 applicant may request approval to deposit a nonrefundable cash payment,
171 based on a formula established by the council, with the City instead of
172 providing the water quality controls required under Section 25-8-211 (*Water*
173 *Quality Control Requirement*). The director shall review the request and
174 accept or deny the request based on the standards in the Environmental
175 Criteria Manual.

176 (G) The director shall deposit a payment made under Subsection (F) in the
177 Suburban and Water Supply Watersheds Structural Control Fund.

178 **PART 7.** City Code Section 25-8-262 (*Critical Water Quality Zone Street Crossings*) is
179 amended to amend the Section heading and to amend Subsections (A) and (B) to read as
180 follows:

181 **§ 25-8-262 CRITICAL WATER QUALITY ZONE MOBILITY [STREET]**
182 **CROSSINGS**

183 (A) In an urban watershed, an arterial street, collector street, [~~or~~] residential
184 street, or rail line may cross a critical water quality zone of any waterway.

185 (B) This subsection applies in a watershed other than an urban watershed.

186 (1) A major waterway critical water quality zone may be crossed by an
187 arterial street or rail line identified in the Transportation Plan.

188 (2) An intermediate waterway critical water quality zone may be crossed
189 by an arterial street, [~~or~~] collector street, or rail line, except:

190 (a) a collector street crossing must be at least 2,500 feet from a
191 collector or arterial street crossing on the same waterway; or

192 (b) in a water supply suburban or water supply rural watershed, or
193 the Barton Springs Zone, a collector street crossing must be at
194 least one mile from a collector or arterial street crossing on the
195 same waterway.

196 (3) A minor waterway critical water quality zone may be crossed by an
197 arterial street, [~~or~~] collector street, or rail line, except:

- 198 (a) a collector street crossing must be at least 900 feet from a
199 collector or arterial street crossing on the same waterway; or
200 (b) in a water supply suburban or water supply rural watershed, or
201 the Barton Springs Zone, a collector street crossing must be at
202 least 2,000 feet from a collector or arterial street crossing on the
203 same waterway.
204 (4) A minor waterway critical water quality zone may be crossed by a
205 residential or commercial street if necessary to provide access to
206 property that cannot otherwise be safely accessed.

207 **PART 8.** City Code Section 25-8-341 (*Cut Requirements*) is amended to read as follows:

208 **§ 25-8-341 CUT REQUIREMENTS.**

- 209 (A) Cuts on a tract of land may not exceed four feet of depth, except:
- 210 (1) in an urban watershed;
- 211 (2) in a roadway right-of-way or rail line right-of-way;
- 212 (3) for construction of a building foundation or swimming pool;
- 213 (4) for construction of a water quality control or detention facility and
214 appurtenances for conveyance such as swales, drainage ditches, and
215 diversion berms, if:
- 216 (a) the design and location of the facility within the site minimize
217 the amount of cut over four feet;
- 218 (b) the cut is the minimum necessary for the appropriate
219 functioning of the facility; and
- 220 (c) the cut is not located on a slope with a gradient of more than 15
221 percent or within 100 feet of a classified waterway;
- 222 (5) for utility construction or a wastewater drain field, if the area is
223 restored to natural grade;
- 224 (6) in a state-permitted sanitary landfill or a sand or gravel excavation
225 located in the extraterritorial jurisdiction, if:

- 226 (a) the cut is not in a critical water quality zone;
- 227 (b) the cut does not alter a 100-year floodplain;
- 228 (c) the landfill or excavation has an erosion and restoration plan
229 approved by the City; and
- 230 (d) all other applicable City Code provisions are met.
- 231 (7) for any cut associated with construction of a multi-use trail, if:
- 232 (a) the cut is not located on a slope with a gradient of more than 15
233 percent or within 100 feet of a classified waterway;
- 234 (b) the cut is limited to no more than eight feet in depth;
- 235 (c) the cut is located in a public right-of-way or public easement;
236 and
- 237 (d) the trail is designed in accordance with the Environmental
238 Criteria Manual.

239 **PART 9.** Subsection (A) of City Code Section 25-8-342 (*Fill Requirements*) is amended
240 to read as follows:

- 241 (A) Fill on a tract of land may not exceed four feet of depth, except:
- 242 (1) in an urban watershed;
- 243 (2) in a roadway right-of-way or rail line right-of-way;
- 244 (3) under a foundation with sides perpendicular to the ground, or with
245 pier and beam construction;
- 246 (4) for construction of a water quality control or detention facility and
247 appurtenances for conveyance such as swales, drainage ditches, and
248 diversion berms, if:
- 249 (a) the design and location of the facility within the site minimize
250 the amount of fill over four feet;

- 251 (b) the fill is the minimum necessary for the appropriate
252 functioning of the facility; and
- 253 (c) the fill is not located on a slope with a gradient of more than 15
254 percent or within 100 feet of a classified waterway;
- 255 (5) for utility construction or a wastewater drain field;
- 256 (6) in a state-permitted sanitary landfill located in the extraterritorial
257 jurisdiction, if:
- 258 (a) the fill is derived from the landfill operation;
- 259 (b) the fill is not placed in a critical water quality zone or a 100-
260 year floodplain;
- 261 (c) the landfill operation has an erosion and restoration plan
262 approved by the City; and
- 263 (d) all other applicable City Code provisions are met; or
- 264 (7) for fill associated with construction of a multi-use trail, if:
- 265 (a) the fill is not located on a slope with a gradient of more than 15
266 percent or within 100 feet of a classified waterway;
- 267 (b) the fill is limited to no more than eight feet in depth;
- 268 (c) the fill is located in a public right-of-way or public easement;
269 and
- 270 (d) the trail is designed in accordance with the Environmental
271 Criteria Manual.

272 **PART 10.** City Code Section 25-8-372 (*Uplands Zone*) in Article 8 (*Urban Watershed*
273 *Requirements*) is amended to add a new Subsection (D) to read as follows:

- 274 (D) Maximum impervious cover for a public mobility project in the right-of-way
275 is 100 percent.

276 **PART 11.** City Code Section 25-8-392 (*Uplands Zone*) in Article 9 (*Suburban*
277 *Watershed Requirements*) is amended to read as follows:

278 **§ 25-8-392 UPLANDS ZONE.**

- 279 (A) This section applies to development in an uplands zone. Impervious cover
280 limits in this section are expressed as percentages of gross site area.
- 281 (B) This subsection applies in the extraterritorial jurisdiction and in the portions
282 of the Lake, Rattan, Buttercup, South Brushy, and Brushy Creek watersheds
283 that are in the zoning jurisdiction.
- 284 (1) Impervious cover for a single-family residential use with a minimum
285 lot size of 5,750 square feet may not exceed:
- 286 (a) 45 percent; or
- 287 (b) if development intensity is transferred under Section 25-8-393
288 (*Transfer of Development Intensity*), 50 percent.
- 289 (2) Impervious cover for a duplex or single-family residential use with a
290 lot smaller than 5,750 square feet in size may not exceed:
- 291 (a) 55 percent; or
- 292 (b) if development intensity is transferred under Section 25-8-393
293 (*Transfer of Development Intensity*), 60 percent.
- 294 (3) Impervious cover for a multifamily residential use may not exceed:
- 295 (a) 60 percent; or
- 296 (b) if development intensity is transferred under Section 25-8-393
297 (*Transfer of Development Intensity*), 65 percent.
- 298 (4) Impervious cover for a commercial use may not exceed:
- 299 (a) 65 percent; or
- 300 (b) if development intensity is transferred under Section 25-8-393
301 (*Transfer of Development Intensity*), 70 percent.

- 302 (5) Impervious cover for mixed use may not exceed:
- 303 (a) the limits in subsection (B)(3) for the portion of the ground
- 304 floor that is multifamily residential;
- 305 (b) the limits in subsection (B)(4) for the portion of the ground
- 306 floor that is commercial; and
- 307 (c) impervious cover for the entire site shall be based on the ratios
- 308 determined on the ground floor.

309 (6) Impervious cover for a public mobility project in the right-of-way

310 may not exceed 90 percent.

311 (C) This subsection applies in the portion of the zoning jurisdiction that is

312 outside the Lake, Rattan, Buttercup, South Brushy, and Brushy Creek

313 watersheds.

314 (1) Impervious cover for a single-family residential use with a minimum

315 lot size of 5,750 square feet may not exceed:

- 316 (a) 50 percent; or
- 317 (b) if development intensity is transferred under Section 25-8-393
- 318 (*Transfer of Development Intensity*), 60 percent.

319 (2) Impervious cover for a duplex or single-family residential use with a

320 lot smaller than 5,750 square feet in size may not exceed:

- 321 (a) 55 percent; or
- 322 (b) if development intensity is transferred under Section 25-8-393
- 323 (*Transfer of Development Intensity*), 60 percent.

324 (3) Impervious cover for a multifamily residential use may not exceed:

- 325 (a) 60 percent; or
- 326 (b) if development intensity is transferred under Section 25-8-393
- 327 (*Transfer of Development Intensity*), 70 percent.

- 328 (4) Impervious cover for a commercial use may not exceed:
329 (a) 80 percent; or
330 (b) if development intensity is transferred under Section 25-8-393
331 (*Transfer of Development Intensity*), 90 percent.
- 332 (5) Impervious cover for mixed use may not exceed:
333 (a) the limits in subsection (C)(3) for the portion of the ground
334 floor that is multifamily residential:
335 (b) the limits in subsection (C)(4) for the portion of the ground
336 floor that is commercial; and
337 (c) impervious cover for the entire site shall be based on the ratios
338 determined on the ground floor.
- 339 (6) Impervious cover for a public mobility project in the right-of-way
340 may not exceed 90 percent.

341 **PART 12.** Subsection (B) of City Code Section 25-8-422 (*Water Quality Transition*
342 *Zone*) in Article 10 (*Water Supply Suburban Watershed Requirements*) is amended to
343 read as follows:

- 344 (B) In a water quality transition zone that does not lie over the South Edwards
345 Aquifer recharge zone, the impervious cover of the land area of a site may
346 not exceed 18 percent. This limit on impervious cover does not apply to a
347 public mobility project in the right-of-way allowed to cross a critical water
348 quality zone under Section 25-8-262 (*Critical Water Quality Zone Street*
349 *Crossings*). In determining land area, land in the 100 year floodplain is
350 excluded.

351 **PART 13.** City Code Section 25-8-423 (*Uplands Zone*) in Article 10 (*Water Supply*
352 *Suburban Watershed Requirements*) is amended to add a new Subsection (D) to read as
353 follows:

- 354 (D) Impervious cover for a public mobility project in the right-of-way may not
355 exceed 65 percent.

356 **PART 14.** Subsection (B) of City Code Section 25-8-452 (*Water Quality Transition*
357 *Zone*) in Article 11 (*Water Supply Rural Watershed Requirements*) is amended to read as
358 follows:

- 359 (B) Development is prohibited in a water quality transition zone that lies outside
360 the South Edwards Aquifer recharge zone, except for:
- 361 (1) development described in Article 7, Division 1 (*Critical Water*
362 *Quality Zone Restrictions*);
 - 363 (2) streets or public mobility projects in the right-of-way;
 - 364 (3) minor drainage facilities or water quality controls that comply with
365 Section 25-8-364 (*Floodplain Modification*) and the floodplain
366 modification guidelines of the Environmental Criteria Manual; and
 - 367 (4) duplex or single-family residential development with a minimum lot
368 size of two acres and a density of not more than one unit for each
369 three acres, excluding acreage in the 100 year flood plain.

370 **PART 15.** City Code Section 25-8-453 (*Uplands Zone*) in Article 11 (*Water Supply*
371 *Rural Watershed Requirements*) is amended to add a new Subsection (E) to read as
372 follows:

- 373 (E) Impervious cover for a public mobility project in the right-of-way may not
374 exceed 55 percent.

375 **PART 16.** Until a separate formula is established as set out under Subsection (F) of City
376 Code Section 25-8-214 (*Optional Payment Instead of Structural Controls*), a payment
377 into the Suburban and Water Supply Watersheds Structural Control Fund shall be
378 calculated using the same formula already established by council for a payment into the
379 Urban Watersheds Structural Control Fund under Subsection (C) of City Code Section
380 25-8-214.

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382 **PASSED AND APPROVED**

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384 _____ §
385 _____, 2022 § _____

Steve Adler

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Mayor

APPROVED: _____ **ATTEST:** _____
Anne L. Morgan Myrna Rios
City Attorney City Clerk

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