

**ORDINANCE NO. 970905-A**

**AN ORDINANCE ESTABLISHING INTERIM REGULATIONS FOR LAND DEVELOPMENT AND DECLARING AN EMERGENCY.**

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

**PART 1. PREAMBLE AND FINDINGS.**

- (A) This ordinance is the City's response to the repeal of Subchapter I, Chapter 481 of the Texas Government Code ("Subchapter I"). This ordinance provides development projects with certainty concerning the nature of the regulations that apply to the project and the length of time for the completion of the development under those regulations.
- (B) The Council finds that:
- (1) the repeal of Subchapter I, Chapter 481 of the Texas Government Code ("Subchapter I") took effect on September 1, 1997;
  - (2) the Texas legislature recently enacted amendments to Section 16.051 of the Water Code to provide for "orderly development, management, and conservation of water resources and preparation for drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state;"
  - (3) the City subscribes to the principles contained in these amendments to the Water Code and desires to protect its drinking water supply and be responsive to those principles in the management of its water resources;
  - (4) review of the City land development regulations is necessary to determine whether an amendment to the City Code is necessary as a result of the repeal of Subchapter I;

- (5) comment from the general public, the Planning Commission, and other boards and commissions on any proposed amendments is necessary;
- (6) the process of seeking public comment and review by City boards and commissions on the need for proposed amendments to the City's land development regulations could not have been completed before September 1, 1997, the effective date of the repeal of Subchapter I; and
- (7) it is in the public interest to establish the following interim development regulations to govern the processing, review, and approval of development applications and permits until final adoption by the Council of any amendments to its land development regulations that may be necessary.

## **PART 2. RELATIONSHIP TO OTHER LAW.**

- (A) This ordinance does not extend a deadline for, or expiration date of, an application or approval under Title 13 of the City Code.
- (B) This ordinance supersedes any conflicting provisions of Title 13 of the City Code, of other ordinances outside the Code, and of any other rules or regulations adopted under the Code or ordinances.

## **PART 3. DEFINITIONS.**

In this ordinance:

- (1) ***Application*** means an application for approval of a preliminary subdivision plan, final subdivision plat, or a site plan.
- (2) ***Barton Springs Zone*** has the meaning prescribed in Section 13-7-3 of the City Code.
- (3) ***Construction*** means:
  - (a) for a site plan, the construction of site plan improvements;

- (b) for a subdivision, the construction of infrastructure including streets, utilities, water quality facilities, and drainage facilities; or
  - (c) for a building permit, the construction of the building for which the building permit is issued, but not the construction of any site improvement not a part of the building.
- (4) ***Desired Development Zone*** means the area not within the Drinking Water Protection Zone.
  - (5) ***Director*** means the Director of the Development Review and Inspection Department or the Director's designee.
  - (6) ***Drinking Water Protection Zone*** means the areas within the Barton Springs Zone, the Barton Creek Watershed, all Water Supply Rural Watersheds, and all Water Supply Suburban Watersheds that are in the City's planning jurisdiction.
  - (7) ***First application*** means the first application approved by the City for a project that requires more than one application approval.
  - (8) ***Interested party*** means a person described in Section 13-1-240 of the City Code or an officer of any environmental organization registered with the Director.
  - (9) ***Non-Profit Corporation*** means a non-profit corporation that has been granted tax exempt status under 26 U.S.C. § 501(c)(3).
  - (10) ***Notice of construction*** means a notice required for construction other than construction that requires a building permit.
  - (11) ***Original regulations*** means the regulations in effect on the date that the first application in a series of applications for a project was filed.
  - (12) ***Project*** means a proposal for development that has a specific objective and that requires the approval of one or more applications.
  - (13) ***Regulations*** means land development regulations contained in Title 13 of the City Code or the administrative rules adopted under Chapter 13-1, Article I, Division 4, of the City Code.

(14) ***Small project*** means a project on less than five acres of land which has been under the continuous ownership by the applicant since August 31, 1987, and is not part of a larger project or development.

(15) ***Subsequent regulations*** means the regulations in effect on the date that an application other than the first application is filed.

#### **PART 4. GENERAL RULES.**

- (A) Except as otherwise provided in this ordinance, an application must comply with the regulations in effect on the date the application is filed.
- (B) If a building permit for a building shown on a site plan or a notice of construction expires before construction begins, the project, including the preliminary subdivision plan, expires. If no building permit or notice of construction is obtained within the time periods contained in Part 5 and 6, the project, including the preliminary subdivision, expires. In that circumstance, the applicant must file a new application and comply with the regulations in effect on the date of the new application.
- (C) The expiration date of a site plan approved before September 6, 1997, controls over the exceptions prescribed in this ordinance.

#### **PART 5. EXCEPTIONS TO PROVIDE A ONE-YEAR GRACE PERIOD.**

- (A) If an application complies with Sections (B) and (C) of this Part, the application may comply with original regulations if a building permit is approved or a notice of construction is filed before September 6, 1998.
- (B) This Part applies to the following:
  - (1) except for a small project or a project that is owned by a non-profit corporation, an application for a project within the Drinking Water Protection Zone for which the first application was filed before September 1, 1987; or
  - (2) an application for a project within the Drinking Water Protection Zone or the Desired Development Zone for which the first application:

- (a) was filed on or after September 1, 1987, and before September 6, 1997; and
  - (b) that was subject to an exemption from water quality regulations under Section 13-2-502 of the City Code.
- (C) A project with an application described in Section (B) of this Part must have either:
- (1) except as provided in Subsection (C)(2), obtained one or more approvals for a final subdivision plat, including subdivision construction plans for infrastructure, for at least 50 percent of the land area within the project between September 1, 1992, and September 6, 1997; or
  - (2) obtained one or more approvals for a site plan, excluding subdivision construction plans for infrastructure, for at least 30 percent of the land area within the project between September 1, 1992, and September 6, 1997; or
  - (3) since September 1, 1992, has incurred direct costs for development of the project (exclusive of land acquisition, interest expense, attorneys fees, allocated corporate overhead, and ad valorem taxes) in the lesser amount of:
    - (a) 10 percent of the most recent appraised market value of the real property on which the project is located, as established by the applicable Appraisal District; or
    - (b) \$ 1 million.

#### **PART 6. EXCEPTIONS TO THE GENERAL RULES.**

- (A) The exceptions prescribed in this Part do not apply to an application described in Part 5 of this ordinance.
- (B) Within the Drinking Water Protection Zone, the following apply:
  - (1) Except as provided in Section (B)(3) of this Part, an application for a single family residential subdivision for which the first application was filed on or after September 1, 1987, and before September 6,

building permit is approved or a notice of construction is filed within five years of the date the first application is filed.

#### **PART 7. NOTICE OF CONSTRUCTION.**

A notice of construction must be filed with the Director and include a description of the improvements to be constructed. A notice of construction expires 180 days after the notice is filed unless construction has begun or at any time when construction is abandoned.

#### **PART 8. APPLICATIONS AND DETERMINATION OF APPLICABLE REGULATIONS.**

- (A) To be eligible to appeal the Director's determination on the applicability of Parts 4, 5, 6(B)(1) through (3), or 6(C)(1) or (2) for a project for which the first application was filed before September 6, 1997, an applicant must file the next application for the project not later than 12 months after the effective date of this ordinance. The application must include a request for determination on a form prescribed by the Director.
- (B) The Director shall provide notice of the application and the request for determination, if any, under Sections 13-1-201(a) and 13-1-202 of the City Code and to an officer of any environmental organization registered with the Director not later than 15 days after the receipt of the application and the request for determination.
- (C) The Director shall make a determination under this Part and mail a notice of the determination to the applicant and all interested parties not later than the 30th day after the receipt of the application and the request. The deadlines to secure a building permit or file a notice of construction provided in Parts 5 and 6 shall be extended by the number of days required by the Director to make the determination.
- (D) The notice must include a statement that the applicant or any interested party may appeal the determination no later than the expiration of 10 days after the date of the determination.

## **PART 9. EXTENSION OF DEADLINES.**

- (A) An applicant may file a request for an extension authorized by Part 6 (B)(5) with the Director not later than 60 days before the deadline prescribed in Part 6(B)(4).
- (B) The Director shall grant an extension if the applicant for the extension has:
  - (1) obtained one or more approvals for a final subdivision plat, including subdivision construction plans for infrastructure, for at least 50 percent of the land area within the project; or
  - (2) obtained one or more approvals for a site plan, excluding subdivision construction plans for infrastructure, for at least 30 percent of the land area within the project; or
  - (3) has incurred direct costs for development of the project (exclusive of land acquisition, interest expense, attorneys fees, allocated corporate overhead, and ad valorem taxes) in the lesser amount of:
    - (a) 10 percent of the most recent appraised market value of the real property on which the project is located, as established by the applicable Appraisal District; or
    - (b) \$ 1 million.

## **PART 10. VOLUNTARY COMPLIANCE.**

- (A) This Part applies to projects for which the first application was filed on or after September 1, 1987, and before September 6, 1997.
- (B) An application for a project in the Drinking Water Protection Zone that may comply with original regulations may be withdrawn and a new application filed to comply with the regulations in effect on the date the new application is filed. If a new application is filed, a building permit must be approved or a notice of construction filed within 10 years of the date on which the new application is approved. The new application must reduce impervious cover as follows:
  - (1) Other than in the Barton Springs Zone, impervious cover must be reduced to not more than the lesser of 25 percent of net site area or of

the impervious cover limitations for the net site area under the regulations in effect for the original application; and

- (2) Other than in the Barton Springs Zone, impervious cover must be reduced to not more than the lesser of 20 percent of the net site area in any portion of the recharge zones of the Northern Edwards Aquifer and Southern Edwards Aquifer located outside the Barton Springs Zone or of the impervious cover limitations for the net site area under the regulations in effect for the original application.

#### **PART 11. INCENTIVES FOR UPDATING TO CURRENT REGULATIONS.**

An application that may comply with original regulations may be withdrawn and a new application filed that complies with the regulations in effect on the date of the new application. As an incentive, the City Council may approve modifications of site development regulations, other than compatibility standards, water quality regulations, or drainage regulations.

#### **PART 12. MANAGED GROWTH AGREEMENTS.**

An applicant who files the first application for a project after the effective date of this ordinance may request that the City Council enter into a Managed Growth Agreement for planning and developing large projects, long term projects, or any project which has special benefits that are in the public interest. The agreement may specify the time period during which an application may comply with original regulations and shall establish an expiration date for each application necessary to complete the project if the otherwise applicable expiration date is to be extended.

#### **PART 13. APPEALS TO CITY MANAGER.**

- (A) An applicant who complies with Part 8 or any other interested party may appeal the Director's decision to the City Manager or the City Manager's designee (the "City Manager") within 10 days of the date of the decision. The scope of an appeal may include the following:
  - (1) the Director's determination of the applicability of particular subsections of Parts 4, 5, 6(B)(1) through (3), or 6(C)(1) or (2) to a project; or
  - (2) the decision to grant or deny an extension under Part 9.

- (B) An appeal may be initiated by filing a completed notice of appeal with the Director on a form provided by the Director no later than 10 days after the date of the decision. The notice of appeal form shall require the following information:
- (1) the name, address, and telephone number of the interested party filing the appeal;
  - (2) the name of the applicant, if the appeal is brought by an interested party other than an applicant;
  - (3) the decision which is appealed;
  - (4) the date the decision to be appealed was made;
  - (5) an indication of the appellant's status as an interested party as defined in this ordinance;
  - (6) a statement giving as specifically as possible the reasons the party appealing believes the decision being appealed does not comply with the applicable provisions of this ordinance.
- (C) An approved plan or permit shall be suspended upon notice of the timely filing of an appeal. No development authorized by a site plan shall occur during the time period during which an appeal may be initiated. No construction which is affected by the appeal of a plan or permit shall occur pending the final disposition of the appeal.
- (D) The appellant has the burden of establishing that the appeal should be granted and may file written briefs with the City Manager with respect to the pending matter within 10 days of receipt of the notice of appeal. An interested party may be represented by an authorized agent.
- (E) The City Manager shall render a decision within 20 days of receipt of the appellant's notice of appeal. If the City Manager fails to render a decision within 20 days of receipt of the appellant's notice of appeal, the appeal is denied.

**PART 14. WAIVER OF FEES.**

The Director shall waive the filing fee for an application that is required to bring a project into compliance with subsequent regulations under this ordinance.

**PART 15. NONAPPLICABILITY; COUNCIL AGREEMENTS.**

(A) This ordinance does not apply to:

- (1) Chapter 13-8, Technical Codes, or Chapter 13-9, Traditional Neighborhood District, of the City Code;
- (2) all zoning regulations;
- (3) ordinances and regulations for utility connections;
- (4) ordinances and regulations to prevent the imminent destruction of property or injury to persons;
- (5) ordinances and regulations regarding the construction of public works located on public lands and easements.
- (6) ordinances and regulations necessary to comply with federal or state requirements.

(B) The following agreements are governed by their terms and laws applicable thereto and are not subject to this ordinance:

- (1) a planned development area agreement approved by the Council or a planned development area combining district;
- (2) a site plan that was specifically incorporated by reference into a public restrictive covenant, and that may be modified, amended, or terminated by only the mutual agreement of the Council and the owners of the property encumbered by the restrictive covenant;
- (3) a Planned Unit Development zoning district or a Planned Unit Development Agreement in the extra-territorial jurisdiction;

1997, may comply with original regulations if a notice of construction is filed before September 6, 1999.

- (2) Except as provided in Section (B)(3) of this Part, an application for a project other than a single family residential subdivision project, for which the first application was filed on or after September 1, 1987, and before September 6, 1997, may comply with original regulations if an application for a site plan is approved before September 6, 1998, and a building permit is approved or notice of construction is filed before September 6, 1999.
  - (3) An application for a small project or a project owned by a non-profit corporation for which the first application was filed before September 6, 1997, may comply with original regulations if a building permit is approved or a notice of construction is filed before September 6, 2000.
  - (4) An application for a project for which the first application was filed on or after September 6, 1997, may comply with original regulations if a building permit is approved or a notice of construction is filed within three years of the date the first application is filed.
  - (5) The applicant for a project for which the first application is filed on or after September 6, 1997, may request that the Director grant a single one year extension of the deadline for building permit approval or the filing of notice of construction under Part 9.
- (C) In the Desired Development Zone, the following apply:
- (1) An application for a project for which the first application was filed before September 1, 1987, may comply with original regulations if a building permit is approved or a notice of construction is filed before September 6, 1999.
  - (2) An application for a project for which the first application was filed on or after September 1, 1987, and before September 6, 1997, may comply with original regulations if a building permit is approved or a notice of construction is filed before September 6, 2002.
  - (3) An application for a project for which the first application is filed on or after September 6, 1997, may comply with original regulations if a

- (4) a site plan approved by Council in connection with a zoning or rezoning request that was specifically incorporated by reference into the ordinance zoning the property covered by the site plan; or
- (5) a municipal utility district consent agreement;
- (6) a school district development agreement;
- (7) a plan for development established in a litigation settlement agreement to which the City is a party; or
- (8) Brackenridge Development Agreement.

**PART 16. PARTIAL REPEAL OF SECTION 13-2-502 OF THE CITY CODE.**

All exemptions from water quality regulations under Section 13-2-502 of the City Code are repealed on the effective date of this ordinance.

**PART 17. ADDITIONAL ORDINANCE.**

The City Manager shall present a proposed ordinance to the City Council on October 16, 1997, that establishes a system of incentives and mitigation options, including the transfer of development rights, to encourage compliance in the Drinking Water Protection Zone with water quality regulations.

**PART 18. EMERGENCY PASSAGE.**

The Council finds that there is an urgent need to provide interim land development regulations as a result of the repeal of Subchapter I of the Texas Government Code and that this constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health and safety.

**PART 19. SEVERABILITY.**

The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance.

**PART 20. WAIVER.**

The Council waives the requirements of Sections 2-2-3 and 2-2-7 of the City Code for this ordinance.

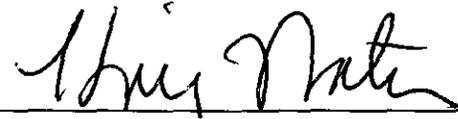
**PART 21. EFFECTIVE DATE.**

This ordinance takes effect on September 5, 1997.

**PASSED AND APPROVED**

September 5, 1997.

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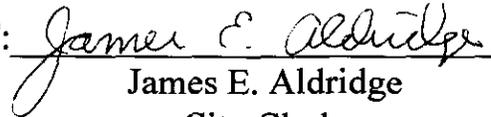
Kirk Watson  
Mayor

APPROVED:



Andrew Martin  
City Attorney

ATTEST:



James E. Aldridge  
City Clerk