

ORDINANCE NO. \_\_\_\_\_

Late Backup # 106  
4-24-08

**AN ORDINANCE AMENDING ORDINANCE NO. 980507-A RELATING TO DEVELOPMENT OF MISSION BETHANY SUBDIVISION.**

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

**PART 1.** Part 1 of Ordinance 980507-A is amended to read as follows:

**PART 1. Findings.**

The Council finds that:

- (1) Austin annexed 13,473 acres of territory in December, 1997, with an estimated population in the annexed area of over 27,000 people. On the effective date of each annexation, the development of property in the annexed area thus became subject to city ordinances, rules, and regulations that apply to development of property inside the city.
- (2) Texas law, as construed and applied by Texas courts, upholds a city's power to regulate the use and development of annexed property for the public benefit, even when imposition of a new regulatory requirement may cause inconvenience, hardship, or loss to a person with an interest in the property. Texas law also confirms that a person may establish a "vested right" to finish development of a property without being subject to newly-applicable city regulations, when in a particular case there is proof that the actual hardship or loss resulting from compliance outweighs the public benefit resulting from having the development comply with those regulations.
- (3) A court may ultimately determine if a person has a vested right to finish a specific development of property without complying with one or more city regulations. Litigation to establish or deny a vested right is time consuming, expensive, and risky, and to the extent possible should be limited to cases where the public interest in requiring compliance with city regulations is clear and compelling.
- (4) The Council has the inherent authority under the Austin City Charter and the Texas Constitution to consider and resolve the competing interests and values at issue when a person asserts a vested right to develop property without complying with city regulations. The Council may and should require

1 compliance with city regulations when the public benefit from compliance  
2 clearly outweighs the hardship or loss to a person with an interest in the  
3 development. When the potential for private hardship or loss is greater and the  
4 public benefit is less compelling, the Council may determine it is in the public  
5 interest to authorize continued development of property without requiring that  
6 development to comply with some or all of the city's development regulations.  
7 This ordinance is intended to respond to, anticipate, and resolve assertions of a  
8 vested right to develop by striking the appropriate balance between public  
9 interest and private hardship for the development of property in areas annexed in  
10 December, 1997.

- 11
- 12 (5) In 1998, Bethany Lutheran Church ("Bethany"), owner of Lots 1-6, Mission  
13 Bethany Subdivision ("the Property"), incurred millions of dollars in debt in  
14 reliance on development entitlements obtained prior to annexation by the City  
15 of Austin. The debt was incurred to fund both Bethany's sanctuary building and  
16 the infrastructure for development of the entire Property, construction of which  
17 began prior to annexation. Bethany planned to use revenue from the  
18 development of part of the Property to help retire the debt
- 19
- 20 (6) Entitlements granted by the City of Austin to Bethany in Ordinance 980507 A  
21 included the ability to develop and use the non-church part of the Property for  
22 certain retail, office, and congregate living purposes in furtherance of the  
23 Church's plans.
- 24
- 25 (7) Conditions prevailing in 2008 make it infeasible to develop the Property for the  
26 commercial and lifetime living uses allowed under the 1998 Ordinance, but  
27 make it feasible instead to develop low density multifamily residential uses that  
28 are potentially less intense than the uses allowed under the 1998 Ordinance.
- 29

30 **PART 2.** Part 3 of Ordinance No. 980507-A is amended to read as follows:

31

32 **PART 3. Applicability.** This ordinance applies to the development of [~~Lots 1, 2, 3, 4,~~  
33 ~~5, and 6]~~ the land described as Lots 1 through 6, [~~of the~~] Mission Bethany  
34 Subdivision [~~plat~~], a subdivision recorded at [~~as recorded in Plat~~] Book 98, Pages 118  
35 and 119, [~~of the~~] Plat Records of Travis County, Texas [~~if the Director determines that~~  
36 ~~the development is intended for religious assembly use or an associated use].~~

1 **PART 3.** Parts 4, 5, 6 of Ordinance No 980507-A are repealed and replaced to read as  
2 follows  
3

4 **PART 4. Permissible Uses.**  
5

6 The Property may be used for residential and religious assembly purposes only  
7 Up to 272 dwelling units may be constructed on the Property Except as otherwise  
8 provided in this ordinance, site development regulations for the subdivision shall be  
9 equivalent to those under the Land Development Code for multifamily residential low  
10 density  
11

12 **PART 5. Applicable Regulations**  
13

14 Except as provided otherwise in this ordinance and subject to Part 6,  
15 development of the Property must comply with the regulations in effect on the  
16 effective date of this ordinance, except the following.  
17

- 18 (A) Section 25-8-213, City Code (Water Quality Control Standards)  
19  
20 (B) Section 25-8-482, City Code (Critical Water Quality Zone)  
21  
22 (C) Section 25-8-483(A), City Code (Water Quality Transition Zone)  
23  
24 (D) Section 25-8-514(A), City Code (Pollution Prevention Required)  
25  
26 (E) The provision of Section 25-8-514(B), City Code (Pollution Prevention  
27 Required), prohibiting pollution controls within the critical water quality zone  
28  
29 (F) Chapter 25-8, Subchapter B, Article 1 (Tree and Natural Area Protection).  
30  
31 (G) Chapter 25-2, Subchapter E, Section 27 (Private Common Open Space and  
32 Pedestrian Amenities)  
33  
34 (H) The development of the allowed residential or religious uses on part of the  
35 Property does not trigger the height and setback requirements of Chapter 25-2,  
36 Subchapter C, Article 10 (Compatibility Standards) with respect to residential  
37 or religious assembly uses on another part of the Property.  
38

39 **PART 6.** In lieu of compliance with the provisions listed in Part 5(A) through (E),  
40 development of the Property must comply with the following requirements.

1  
2 (A) Impervious cover shall not exceed 340,000 square feet for the religious  
3 assembly use and 310,000 square feet for the residential use.

4  
5 (B) Storm water controls for development of the Property shall comply with the  
6 engineering report entitled "Ordinance 980507A Settlement Negotiations,  
7 Mission Bethany Water Quality Enhancements, CAI Proj. No 420.0101" dated  
8 18 April 15, 2008, on file at the Watershed Protection and Development Review  
9 Department

10  
11 (C) Development is prohibited in the water quality transition zone, except for:

12  
13 (i) up to 5000 square feet of a building that is constructed on the boundary  
14 between the uplands zone and the water quality transition zone, provided  
15 that no more than one such building shall be constructed;

16  
17 (ii) storm water controls under Section (B) of this Part, and

18  
19 (iii) development under Article 7, Division 1, Chapter 25-8, City Code  
20 (Critical Water Quality Zone Restrictions)

21  
22 (D) Development in the critical water quality zone is prohibited except for

23  
24 (i) water quality controls under Section (B) of this Part, and

25  
26 (ii) development under Article 7, Division 1, Chapter 25-8, City Code  
27 (Critical Water Quality Zone Restrictions)

28  
29 (E) The Director of the Watershed Protection and Development Review  
30 Department may approve minor adjustments either to the impervious cover  
31 allocations under Section (A) of this Part between the religious assembly use  
32 and the residential use or to the requirements for storm water controls under  
33 Section (B) of this Part if

34  
35 (i) the overall level of water quality protection and stormwater management  
36 is not reduced or impaired,

37  
38 (ii) total impervious cover does not exceed 650,000 square feet on the  
39 Property; and  
40

(iii) there no other significant effect on public health, safety, or welfare

**PART 4.** Part 7 of Ordinance No. 980507-A is repealed.

**PART 5. Expiration.**

This ordinance expires May 7, 2018, if before May 7, 2008, the Director of Watershed Protection and Development Review Department accepts for filing in the Travis County Real Property Records a restrictive covenant requiring all development of the Property that occurs after adoption of the erosion and sedimentation control standards developed pursuant to City Council Resolution 20071018-038 to comply with those standards. This ordinance expires May 7, 2008, if the Director has not accepted the restrictive covenant.

**PART 6.** Except as otherwise provided in this ordinance, the conditions and provisions of Ordinance No. 980507-A remain in effect.

**PART 7.** This ordinance takes effect on \_\_\_\_\_, 2008

**PASSED AND APPROVED**

\_\_\_\_\_, 2008      § \_\_\_\_\_  
   § \_\_\_\_\_  
   § \_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
David Allan Smith      Shirley A. Gentry  
City Attorney      City Clerk