ORDINANCE NO. 20110526-098

AN ORDINANCE RELATING TO SPECIAL EXCEPTIONS AND FEE WAIVERS FOR CITY CODE VIOLATIONS; AMENDING CITY CODE SECTIONS 2-1-111, 25-1-211, 25-1-212, 25-1-214, 25-1-215, 25-1-216, 25-1-217, AND 25-1-218; AND ADDING NEW SECTIONS 25-1-366 AND 25-2-476.

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

PART 1. The city council finds that:

(A) Certain technical code and zoning violations exist on residential properties throughout the City of Austin. In some cases, these violations have existed compatibly with the surrounding neighborhoods for 25 or more years with no known adverse impacts to public health, safety, or welfare.

(B) In such cases, the City's existing amnesty program, as codified in Section 25-1-365 of the Land Development Code, provides a mechanism for excusing full compliance with city regulations for certain minor violations existing on or before adoption of the current zoning code on March 1, 1986.

(C) To address setback violations that meet all requirements for administrative amnesty except for the 1986 cutoff date, the Board of Adjustment could be authorized to grant a special exception in limited circumstances. A special exception, as authorized under state law, may be granted without a hardship finding required for a traditional zoning variance.

(D) Together with the City's existing amnesty program, authorizing special exceptions and waiving fees for landowners seeking to address minor zoning setback violations would allow enforcement staff to focus on more significant violations of city code.

PART 2. Subsection (F) of City Code Section 2-1-111 (*Board of Adjustment*) is amended to read:

(F) The board shall:

(1) hear and decide a request for a variance from the requirements of Chapter 25-2 (*Zoning*), except as otherwise provided by the Code;

(2) hear and decide an appeal of an administrative action under Chapter 25-2 (*Zoning*);

(3) hear and decide a request for a variance from the requirements of airport zoning regulations under Section 241.034, Local Government Code; [~~and~~]

(4) hear and decide a request for a special exception under Chapter 25-2 (*Zoning*); and

(5)[(~~4~~)] perform other duties prescribed by ordinance or state law.

PART 3. City Code Chapter 25-2 (*Zoning*), Article 2 (*Appeals, Variances, Special Exceptions, and Adjustments*) is amended to amend the title of Division 2 (*Variances*) and to amend Sections 25-1-211 (*Application for a Variance*), 25-1-212 (*Report*), 25-1-214 (*Public Hearing and Notice*), 25-1-215 (*Action on Application*), 25-1-216 (*Effective Date of Variance*), 25-1-217 (*Expiration of Variance*), and 25-1-218 (*Restrictions on Similar Applications*) to read as follows:

Division 2. Variances and Special Exceptions.

§ 25-1-211 APPLICATION FOR A VARIANCE OR SPECIAL EXCEPTION.

(A) A person may file an application for a variance or a special exception with:

(1) the building official for a variance or special exception granted by the Board of Adjustment; or

(2) the responsible director for a variance granted by the Land Use Commission or the council.

(B) An application may include a request for:

(1) variances or special exceptions from regulations applicable to the same site; or

(2) similar variances or special exceptions on two or more adjacent parcels with similar characteristics.

(C) The building official or responsible director may require that the applicant provide information that the building official or responsible director determines is necessary to evaluate the variance or special exception request.

§ 25-1-212 REPORT.

(A) For an application for a variance or special exception requiring consideration by the Board of Adjustment, the building official shall prepare and file a report with the board not later than the 11th day before the public hearing.

(B) For an application for a variance requiring consideration by the Land Use Commission, the responsible director shall prepare and file a report with the Land Use Commission not later than the 11th day before the public hearing.

(C) The building official shall make a report described in this section available to the public when the report is filed with the Board of Adjustment or Land Use Commission.

(D) This subsection applies to an application for a zoning variance or special exception for property zoned as a family residence (SF-3) or more restrictive district.

(1) The building official shall waive the application fee if the official determines that the variance or special exception is supported by the notice owners of 80 percent or more of the property located within 300 feet of the property for which the variance is sought.

(2) An applicant who seeks a fee waiver must:

(a) obtain the signature of each notice owner who supports the variance or special exception, on a form provided by the building official; and

(b) submit the completed form to the building official.

§ 25-1-214 PUBLIC HEARING AND NOTICE.

(A) The Board of Adjustment or Land Use Commission, as applicable, shall hold a public hearing on an application for a variance or special exception not later than the 45th day after the date the application is filed.

(B) The building official or responsible director, as applicable, shall give notice under Section 25-1-132(A) *(Notice Of Public Hearing)* of a public hearing on an application for a variance or special exception, and, for a variance or special exception heard by the Board of Adjustment, by posting one or more signs.

§ 25-1-215 ACTION ON AN APPLICATION.

(A) Except as otherwise provided in this chapter, the Board of Adjustment or the Land Use Commission shall act on an application for a variance or special exception not later than the next meeting after the public hearing is closed.

(B) The Board of Adjustment or the Land Use Commission may:

(1) approve an application for a variance;

(2) approve an application for a variance with modifications; or

(3) deny an application for a variance.

(C) The Board of Adjustment or the Land Use Commission may require that a variance be:

(1) revocable;

(2) effective for a specified time period; or

(3) subject to one or more conditions.

(D) The Board of Adjustment may act on a request for a special exception in the manner provided for variances under Subsections (B) and (C) of this section.

§ 25-1-216 EFFECTIVE DATE OF VARIANCE OR SPECIAL EXCEPTION.

(A) Except as provided in Subsection (B), a decision on a variance or special exception is effective immediately.

(B) If a variance or special exception is appealable, a decision on the variance is effective:

(1) except as provided in Subsection (B)(2), at the expiration of the time period during which an appeal may be filed; or

(2) if a notice of appeal is filed, when a final decision on the appeal is made.

§ 25-1-217 EXPIRATION OF VARIANCE OR SPECIAL EXCEPTION.

(A) Except as provided in Subsection (B), a variance or special exception expires:

(1) except as provided in Subsection (A)(2), one year after the effective date of the variance or special exception; or

(2) on the date established as a condition of approval.

(B) A variance or special exception expires on the date an approved plan or permit expires if:

(1) an application for approval of a plan or permit is submitted before a variance or special exception expires under Subsection (A); or

(2) the variance or special exception is granted in association with the approved plan or permit.

§ 25-1-218 RESTRICTION ON SIMILAR APPLICATIONS.

If an application for a variance or special exception is denied, or if a variance or special exception is revoked, a person may not file an application for the same or a similar variance or special exception on the same or [~~a~~] substantially the same site for a period of one year from the date of denial or revocation.

PART 4. City Code Chapter 25-2 (*Zoning*) is amended to repeal and replace Article 7, Division 3 (*Special Exceptions*) with a new Division 3 to read as follows:

Division 3. Reserved.

PART 5. City Code Chapter 25-2 (*Zoning*) is amended to add a new Section 25-2-476 to read:

§ 25-2-476 SPECIAL EXCEPTIONS.

(A) Subject to the limitations under Subsection (B) of this section, the Board of Adjustment may grant a special exception for an existing residential structure, or portion of an existing structure, that violates a setback required under Chapter 25-2 (*Zoning*).

(B) The Board may grant a special exception under Subsection (A) of this section if:

(1) the residential use for which the special exception is sought is allowed in an SF-3 or more restrictive zoning district;

(2) the building official performs an inspection and determines that the violation does not pose a hazard to life, health, or public safety; and

(3) the Board finds that:

(a) the violation has existed for:

(i) at least 25 years; or

(ii) at least 15 years, if the application for a special exception is submitted on or before June 6, 2013;

(b) the use is a permitted use or a nonconforming use;

(c) the structure does not share a lot with more than one other primary residence; and

(d) granting a special exception would not:

(i) alter the character of the area;

(ii) impair the use of adjacent property that is developed in compliance with city code; or

(iii) grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

(C) A special exception granted under this section:

(1) applies only to the structure, or portion of a structure, for which the special exception was granted and does not run with the land;

(2) may not authorize an increase in the degree of noncompliance or excuse compliance with minimum health and safety requirements; and

(3) may not authorize a remodel or addition to the existing structure, except to the extent required by the building official to meet minimum life and safety requirements.

(D) A structure granted a special exception under this section shall be treated as a non-complying structure under Chapter 25-2, Article 8 (*Noncomplying Structures*).

PART 6. City Code Section 25-2 (*Zoning*) is amended to add a new Section 25-1-366 to read:

§ 25-1-366 FEE WAIVER PROGRAM FOR EXISTING RESIDENTIAL STRUCTURES.

(A) Subject to the requirements of Subsection (B) of this section, the director shall:

(1) waive the fee for a variance application to the Board of Adjustment under Section 25-2-473 (*Variance Requirements*) or a special exception under 25-2-476 (*Special Exceptions*); and

(2) refund permitting and inspection fees if:

(a) the building official determines, based on a minimum life-safety inspection, that the structure does not pose a hazard to life, health, or public safety; and

(b) the structure:

(i) complies with current zoning regulations; or

(ii) the structure receives a special exception or variance from the Board of Adjustment or certificate of occupancy or

compliance from the building official under Section 25-1-365 (*Exemption from Compliance*).

(B) A fee waiver or refund authorized under Subsection (A) of this section:

(1) applies only to existing residential structures and does not cover permits for remodels, except to the extent required by the building official to address minimum life and safety requirements;

(2) applies only if the residential use for which a special exception is sought is allowed in an SF-3 or more restrictive zoning district;

(3) does not cover fees for re-inspections or for after-hours inspections; and

(4) expires on June 6, 2013.

(C) The director shall refund fees collected after June 6, 2012 if the requirements for waiver under this section are met.

PART 7. This ordinance takes effect on June 6, 2011.

PASSED AND APPROVED

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May 26, 2011 §

Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____
Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk