

ORDINANCE NO. 20120426-122

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-1 AND 25-2 RELATING TO THE ISSUANCE, NOTIFICATION, AND APPEAL OF ZONING USE DETERMINATIONS.

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

PART 1. City Code Section 25-2-2 (*Determination of Use Classification*) is amended to read:

§ 25-2-2 DETERMINATION OF USE CLASSIFICATION.

(A) The director of the [~~Neighborhood~~] Planning and Development Review [~~Zoning~~] Department shall determine the appropriate use classification for an existing or proposed use or activity.

(B) If a particular use is not classified within a zoning category or land use definition, [~~In making a determination under this section,~~] the director [~~of the Neighborhood Planning and Zoning Department~~] shall determine the appropriate use classification based on the [~~consider~~] the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C) If a use requires a determination under Subsection (B) of this section, a person [~~An interested party~~] may request that the director issue a formal use determination stating how the use is classified under existing use regulations. A use determination may be appealed [~~appeal a determination of the director of the Neighborhood Planning and Zoning Department under this section~~] to the Board of Adjustment under Section 25-1-197 (Use Determinations).

(D) The director [~~of the Neighborhood Planning and Zoning Department~~] shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E) The director [~~of the Neighborhood Planning and Zoning Department~~] shall maintain a list of determinations made under this section.

PART 2. City Code Chapter 25-1, Article 7 (*Appeals, Variances, Special Exceptions, and Adjustments*) is amended to add a new Division 2 to read as follows and to renumber the remaining divisions of Article 7 accordingly:

Division 2. Administrative Decisions.

§ 25-1-197 USE DETERMINATIONS.

(A) This section applies to a formal determination by the director under Section 25-2-2 (*Determination of Use Classification*) regarding the appropriate classification of a land use that is not specifically classified under Chapter 25-2, Subchapter A (*Zoning Uses*).

(B) Except as otherwise provided by this section, a use determination may be requested at any time by filing an application on a form provided by the director and by paying a fee established by separate ordinance.

(C) In addition to any additional information required by the director, an application for a use determination must:

- (1) state whether the determination is requested in connection with a specific project, and if so, reference the application number;
- (2) if the determination is not related to a specific development application, state whether it is requested for a particular address;
- (3) describe the land use(s) for which a determination is sought; and
- (4) include any information that the applicant requests the director to consider in making the use determination, including but not limited to an explanation of the similarities, if any, of the use to other classified uses.

(D) A use determination for a project that is subject to a pending development application is a "project use determination" and is subject to the requirements of this subsection.

- (1) The director shall determine whether a site plan application requires a use determination under Section 25-2-2 (*Determination of Use Classification*) within the applicable review period required by Section 25-5-114 (*Time Periods for Determination; Notice*) or Section 25-5-143 (*Director's Report*).
- (2) If the director determines that a use determination is required, the applicant must submit a request for a project use determination under Subsection (B) before the application expires.
- (3) Within 14 days after receiving a request for a project use determination, the director shall issue a determination under Subsection (F) of this section and provide notice of the determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*).

- (4) Any person entitled to notice of a use determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*) may appeal the decision to the Board of Adjustment no later than 14 days after notice is provided.

(E) A request for a use determination that is not associated with a pending development application is a “non-project use determination” and is subject to the requirements of this subsection.

- (1) A non-project use determination may be requested by anyone, at any time, for a use that requires a determination under Section 25-2-2 (*Use Determination*).
- (2) In addition to the requirements in Subsection (C) of this section, an application for a non-project use determination must include:
 - (a) any information requested by the director regarding the nature of the use for which a determination is requested, including the size, scale, or intensity of the use; and
 - (b) a specific address, if the applicant intends to rely on the determination in connection with a development application.
- (3) Within 14 days after receiving a request for a non-project use determination, the director shall provide notice of the determination:
 - (a) to the applicant and to registered environmental and neighborhood organizations, if the determination is not associated with a specific address; or
 - (b) to all parties entitled to notice under Section 25-1-133(A) (*Notice of Applications and Administrative Decisions*), if the determination is associated with a particular address.
- (4) Any person entitled to notice of a non-project use determination under this subsection may appeal the determination to the Board of Adjustment within 14 days.

(F) The director may not make a decision on an application that is dependent upon a use determination:

- (1) until after the period for appealing the use determination to the Board of Adjustment has run;
- (2) if the use determination is appealed to the Board of Adjustment, until after the board has decided the appeal; or
- (3) if a decision of the Board of Adjustment is appealed to district court, until after the district court has decided the appeal.

- (G) Unless a use determination is reversed or modified by the Board of Adjustment, the director shall follow the determination in reviewing subsequent requests for a determination on the same or substantially similar land uses.
- (H) A use determination is not subject to further notification or appeal under this section if it has been considered by the Board of Adjustment in response to an appeal or notice of the determination was previously provided under this section and no appeal was filed.
- (I) A use determination issued by the director under this section must:
- (1) include all information required under Section 25-1-133(C) (*Notice of Applications and Administrative Decisions*);
 - (2) state the director's determination regarding how the use is classified under existing use regulations;
 - (3) explain the factors considered by the director in making the determination under Section 25-2-2 (*Determination of Use Classification*), including the similarity of a use to other classified land uses; and
 - (4) describe any special characteristics of the use determination, including limitations on the size, scale, location or intensity, of the use.
- (J) A use determination issued under this section may not be used to render decisions interpreting site development regulations.

PART 3. This ordinance takes effect on May 7, 2012.

PASSED AND APPROVED

_____, April 26, 2012 §
§
§ _____ Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____
Karen M. Kennard Shirley A. Gentry
City Attorney City Clerk