ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2013-011

Description:

Amending City Code Chapters 25-1 and 25-5 relating to vested development rights and use continuing rights under the Texas Local Government Code, and Chapter 24-4 and 30-2 relating to subdivision plats.

Background:

The proposed ordinance relates to the review and evaluation of "vested rights" claims, which means, in general terms, a claim by a landowner that permit applications for a development project are subject to regulations other than those in effect on the date the application is submitted. On March 28, 2013, the City Council adopted Ordinance No. 20130328-019 (See Attachment "A"), which repealed portions of the City's vested rights regulations and initiated the development of a new vested rights ordinance. In preparing the ordinance, the Council directed the City Manager to ensure compliance with State law and to consider the procedures and ordinances adopted by other Texas cities. A comparison chart of vesting rights ordinances from other Texas City Codes is attached to this report as Attachment "F."

Since October 8, 2013, City Staff has met with representatives of the development community and environmental community. Based on the input Staff has received from these stakeholders, Staff has revised its recommendation. Specific comments have been provided by the Real Estate Council of Austin (RECA) and representatives of the environmental community (See attachments "G" and "H," respectively. Staff has also included amendments to Chapter 25-4 and Title 30, regarding subdivision development within the City limits and the Extra Territorial Jurisdiction (ETJ) of Travis County.

Departmental Comments:

The revised proposed ordinance (See Attachment "B") includes review and decision-making procedures for evaluating the distinct types of vested rights provided for under Chapter 245 (See Attachment "C") and Section 43.002 (See Attachment "D") of the Texas Local Government Code. The ordinance also amends the rules applicable to permit expiration for dormant projects and adopts new expiration periods that would apply to projects started after the effective date of the ordinance. A copy of the current City dormant projects regulations is attached (Attachment "E").

The basic provisions of the proposed ordinance address these key provisions:

1. The ordinance covers the different kinds of "vested rights" protections afforded by Chapter 245 and Section 43.002 of the Local Government Code. (The latter deals

specifically with continuing uses begun prior to annexation; the former is the general statute on vested development rights);

2. Establishes requirements for obtaining recognition of vested rights for a project, with an emphasis on providing information relevant to the nature, scope and intensity of the project and the project's development history;

3. Provides general criteria for reviewing vested rights claims and explains the factors that affect vested rights (e.g., whether a project has changed or been completed).

4. Requires a written decision by the director explaining the basis for a vested rights determination. A decision approving a vested rights claim must include the date that rights are determined to have accrued and any conditions necessary to ensure consistency with the original project for which vested rights are recognized.

5. Amends the dormancy requirements applicable to projects that are not subject to permit expiration dates.

6. Adopts new expiration periods to apply prospectively, for projects begun after adoption of the ordinance. Expiration periods are longer than under old project duration ordinance, avoid conflicts with existing site plan expiration periods, and provide for extensions.

7. Authorizes council to approve "project consent agreements" establishing the development regulations applicable to a project if: (1) a development's vested rights are unclear; or (2) a developer with clearly established vested rights proposes a project more consistent with current regulations. Agreements cannot be considered unless recommended by the director or initiated by council.

8. Authorizes the director to adopt guidelines to help address common questions that arise in reviewing vested rights claims.

Addition Changes Recommended by Staff since October 8, 2013:

9. Part 2. Section 25-1-542, CRITERIA FOR APPROVAL: Add language to clarify rights that may exist under common law vested rights.

10. Part 2. Section 25-1-544: PROJECT CONSENT AGREEMENTS: Add language to recognize a proposed development agreement per Section 212.172 of the Local Government Code that relate to projects located in the ETJ.

11. Part 2. Section 25-1-552: EXPIRATION OF PROJECTS BEGUN ON OR AFTER _____ (*effective date the ordinance*): Changes the project expiration date associated with a preliminary plan to match the plan expiration date as it applies under Section 25-4-62 and Section 30-2-62 (applicable to the ETJ of Travis County). In addition, creates a project expiration date for a fair notice application of one year.

12. Part 2. Section 25-1-553: MANAGED GROWTH AGREEMENTS: Add a new section for Managed Growth Agreements (MGA) that must be filed under current regulations, located within the City's zoning jurisdiction, not located within the Barton Springs Zone and at least 250 acres in size or partially located within a Regional Center or Town Center identified in the Growth Concept Map of the Imagine Austin Comprehensive Plan. It is the City Council's decision to approve or deny a MGA after a Staff review and recommendation that is based on certain criteria.

13. Part 5. Section 25-1-2, Applicability of Regulations: Addresses the applicability of regulations to address vested rights in the Planning Jurisdiction.

14. Part 7: Section 25-2-62: EXPIRATION OF APPROVED PRELIMINARY PLAN: Establishes a uniform preliminary plan expiration date of five years from the date of approval, regardless of its geographic location within the Planning Jurisdiction (with the exception noted in #15 below).

15. Part 9: Section 30-2-062, Extension of Approved Preliminary Plan: Amends the Preliminary Plan expiration date for projects located within the ETJ portion of Travis County to be 5 years regardless of location, but only with the concurrent approval by the Travis County Commissioners Court.

Revised Staff Recommendation:

Staff recommends approval of the proposed code amendment. See Attachment "B"

Planning Commission's Codes and Ordinance Subcommittee:

September 17, 2013: Forward amendment to the Planning Commission without a recommendation and with a request for an executive session. (Vote: 5-0)

Planning Commission Action:

August 13, 2013: Referred amendment to the Codes and Ordinance Subcommittee. (Vote: 5-0)
September 24, 2013: Approved staff requested postponement to October 8, 2013. (Vote: 7-0)
October 8, 2013: Approved the ordinance as request by Staff. (Vote: 8-0) See Attachment "I."
February 5, 2014: Approved postponement request from RECA and SOS. Item was postponed to 03-25-2014. (Vote: 9-0)

City Council Date and Action:

August 8, 2013: Set a public hearing for August 29, 2013. (Vote: 7-0)
August 29, 2013: Approved staff requested postponement to October 3, 2013 (Vote 7-0)
October 3, 2013: Approved staff requested postponement to October 17, 2013 (Vote: 7-0)
October 17, 2013: Approved staff requested postponement to November 7, 2013 (Vote: 7-0)

November 7, 2013: Withdrawn.
December 12, 2013: Approved staff/RECA requested postponement to Jan. 30, 2014 (Vote: 7-0)
January 30, 2014: Approved staff requested postponement to January 30, 2014 (Vote: 7-0)
March 6, 2014: Staff will make a request to postponement the consideration of this amendment to 04-10-2014.

Ordinance Number:

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