



**Public Hearing  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.:** 51  
**AGENDA DATE:** Thu 04/22/2004  
**PAGE:** 1 of 1

**SUBJECT:** Conduct a public hearing and approve an ordinance amending Title 25 of the City Code (Land Development Code) regarding administrative approval of wastewater lines in the Critical Water Quality Zones in the Harris Branch, Decker, Gilleland and Wilbarger Creek watersheds (Weston Study Area).

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING** Watershed Protection and **DIRECTOR'S**  
**DEPARTMENT:** Development Review      **AUTHORIZATION:** Joe Pantalione

**FOR MORE INFORMATION CONTACT:** Patrick Murphy, 974-2821; Martha Vincent, 974-3371

**PRIOR COUNCIL ACTION:** Council Resolution 031211-53 directing the City Manager to present recommendations within 60 days regarding administrative approvals for wastewater infrastructure in the critical water quality zone of the watersheds within the Weston Study Area. February 5, 2004 presentation to Council by the Watershed Protection and Development Review Department and Austin Water Utility where Council directed the City Manager to initiate the recommended code amendments.

**BOARD AND COMMISSION ACTION:** Environmental Board and Zoning and Platting Commission recommended disapproval. Planning Commission recommended disapproval of Code Amendments, and recommended adopting streamline variance process.

**PURCHASING:** N/A

**MBE / WBE:** N/A

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After the February 5, 2004 presentation to Council, staff began work on the required code amendments and administrative rules to implement the Council's directive. A draft ordinance has been completed that provides for administrative approval by the Director of the Watershed Protection and Development Review Department of variances to construct wastewater lines in the Critical Water Quality Zone under certain conditions. The administrative variance can only be approved in disturbed areas of the critical water quality zone. The wastewater lines must be located so that it will not be exposed by future channel erosion and must be located a minimum of 100 feet from the existing creekbank. The easement and the area between the easement and the centerline of the waterway must be restricted against any future disturbance and a native restoration plan must be provided for these areas.

The proposed amendment went to the Environmental Board on March 17, 2004, and the Zoning and Platting Commission on April 6, 2004. It is scheduled to go to the Planning Commission April 13, 2004.



## **ENVIRONMENTAL BOARD MOTION 031704-C1**

Date: March 17, 2004

Subject: Ordinance Amendment to 25-8-42: Administrative Approval to develop New Wastewater Lines in the Critical Water Quality Zone

Motioned By: Lee Leffingwell

Seconded By: Mary Gay Maxwell

### **Recommendation**

The Environmental Board recommends disapproval of the proposed ordinance to the Land Development Code Section 25-8-42 – to allow administrative approval of new wastewater lines in the CWQZ of the watersheds included in the Weston Study area.

### **Rationale**

The City of Austin has a long-standing policy memorialized in the Land Development Code against locating new sewer lines in creeks and the Critical Water Quality Zones associated with them. The code in fact prohibits most types of construction in the CWQZ.

The Board believes that any deviation (variance) from this policy should be carefully scrutinized in a public venue in each individual case to ensure that the purpose for the policy (protection of the creeks) is not compromised. This ordinance amendment would effectively remove the process whereby the public is informed of and allowed to comment on these variances.

The Board, in this recommendation, makes no specific comment on the merits of the Weston study case. The recommendation is specific only to the process whereby this type of variance is approved.

The Board has previously recommended approval of similar administrative variances to expedite implementation of the Austin Clean Water Plan. However, in this case, a serious environmental hazard – namely leaking sewer lines already in the creeks – was preexisting. In addition, the City was subject to a strict and short-term mandate for remediation by the federal Environmental Protection Agency. The mandate prescribed stiff financial penalties to the City for failure to meet the requirements on a timely basis. The two situations are therefore completely different.

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Authority currently exists to revise existing guidelines for submitting applications for variances, which could significantly reduce the time and expense required on the part of the applicant. The argument that this ordinance would reduce the expense of engineering studies in the face of uncertainty can be adequately addressed in the rule-making process.

There is no compelling interest for the citizens of Austin to change the current procedure for obtaining variances to locating sewer lines in the CWQZ.

Vote        6-1-0-1

For:        Ascot, Curra, Holder, Leffingwell, Maxwell, Riley

Against:   Moncada

Abstain:   None

Absent:    Anderson,

Approved By:

Lee Leffingwell, Chair

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

**AN ORDINANCE AMENDING SECTION 25-8-42 OF THE CITY CODE  
RELATING TO ADMINISTRATIVE VARIANCES.**

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

**PART 1.** Section 25-8-42 of the City Code is amended to add a new Subsection (D) to read as follows and reletter existing Subsection (D) as Subsection (E):

(D) The director may grant a variance from Section 25-8-392 (*Critical Water Quality Zone*) or Subsection 25-8-361(A) (*Wastewater Restrictions*) for the development of a wastewater line in a critical water quality zone in the Decker, Gilleland, Harris Branch, or Wilbarger creek watershed if the director determines that:

- (1) the variance does not create a significant probability of harmful environmental consequences;
- (2) the natural and traditional character of the waterway has been previously disturbed and is not re-established;
- (3) the wastewater line will be outside the area adjacent to or beneath the waterway that is likely to be eroded by the waterway during the period of time in which the wastewater line will be in operation;
- (4) the land's surface within 100 feet of the waterway bank will not be disturbed by development of the wastewater line; and
- (5) the wastewater line easement and the area between the easement and the waterway will be revegetated with native plants and restricted against disturbance.

1 **PART 2.** This ordinance takes effect on \_\_\_\_\_, 2004.

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3 **PASSED AND APPROVED**

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5 §  
6 §  
7 \_\_\_\_\_, 2004 § \_\_\_\_\_  
8 \_\_\_\_\_ Will  
9 \_\_\_\_\_ M ayor

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11  
12 **APPROVED:** \_\_\_\_\_  
13 David Allan Smith  
14 City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Brown  
City Clerk