

8/31/06  
#69

**ORDINANCE NO.**

**AN ORDINANCE AMENDING TITLE 25 OF THE CITY CODE RELATING TO HEIGHT DEFINITION AND MEASUREMENT, THE CAPITOL VIEW CORRIDOR OVERLAY DISTRICT, DUPLEX RESIDENTIAL USES, NONCOMPLYING STRUCTURES, COMPATIBILITY HEIGHT LIMITATIONS, BUILDING PERMITS, AND DEMOLITION PERMITS.**

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

**PART 1.** Section 25-1-21(46) (*Definitions*) of the City Code is amended to read:

- (46) HEIGHT means the height of a structure and is measured in accordance with Section 25-1-24 (*Height Measurement*). [~~when used in reference to a building, means the vertical distance from the average of the highest and lowest grades adjacent to the building to:~~
- ~~(a) for a flat roof, the highest point of the coping;~~
  - ~~(b) for a mansard roof, the deck line;~~
  - ~~(c) or a pitched or hip roof, the average height of the highest gable; or~~
  - ~~(d) for other roof styles, the highest point of the building.]~~

**PART 2.** Chapter 25-1 (*General Requirements And Procedures*) of the City Code is amended to add Section 25-1-24 to read:

**§ 25-1-24 HEIGHT MEASUREMENT.**

- (A) This section prescribes height measurement for a building or setback plane.
- (B) In this subsection, NATURAL GRADE is the topography of a site before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural or landscape feature. Natural grade is determined by reference to an on-ground survey, City-approved topographic map, or other information approved by the director.
- (C) The director may require an applicant to provide a third-party report that shows the natural grade of a site.
- (D) The height of a building or setback plane is measured from the lower of natural grade or finished grade, except the height is measured from finished grade if:

1 (1) the site's grade was legally modified before October 1, 2006;

2 (2) the site's grade is modified to elevate it out of the 100-year floodplain;  
3 or

4 (3) the site is located on the approximately 698.7 acres of land known as the  
5 Mueller Planned Unit Development, which was zoned as a planned unit  
6 development (PUD) district by Ordinance Number 040826-61.

7 (E) The height of a building is measured vertically from the average of the highest  
8 and lowest grades adjacent to the building to:

9 (1) for a flat roof, the highest point of the coping;

10 (2) for a mansard roof, the deck line;

11 (3) for a pitched or hip roof, the average height of the highest gable;

12 (4) for other roof styles, the highest point of the building.

13 (F) For a stepped or terraced building, the height of each segment is determined  
14 individually.

15 (G) The height of a structure other than a building is measured vertically from the  
16 ground level immediately under the structure to the top of the structure. The  
17 height of a fence on top of a retaining wall is measured from the bottom of the  
18 retaining wall.

19 (H) A maximum height is limited by both number of feet and number of stories if  
20 both measurements are prescribed, regardless of whether the measurements are  
21 conjoined with "or" or "and".

22 **PART 3.** Section 25-2-642 (*Capital View Corridor Overlay District Regulations*) is  
23 amended to amend Subsection (B) to read:

24 (B) In a Capitol view corridor, a structure may not exceed the elevation [height] of  
25 the plane delineating the corridor. The height limitation exceptions of  
26 Section 25-2-531 (*Height Limitation Exceptions*) do not apply to this  
27 subsection.

28 **PART 4.** Section 25-2-773 (*Duplex Residential Use*) of the City Code is amended to add  
29 Subsection (D) to read:

30 (D) The two dwelling units:

- (1) must have a common wall, which may be a common garage wall, for at least 50 percent of the maximum depth of the building;
- (2) must have a common roof; and
- (3) may not be separated by a breezeway, carport, or other open building element.

**PART 5.** Section 25-2-963 (*Modification And Maintenance Of Noncomplying Structures*) of the City Code is amended to read:

**§ 25-2-963 MODIFICATION AND MAINTENANCE OF NONCOMPLYING STRUCTURES.**

- (A) Except as provided in Subsection (B) [~~of this section~~], a person may modify or maintain a noncomplying structure.
- (B) Except as provided in Subsections (C) and (D) [~~of this section~~], a person may not modify or maintain a noncomplying structure in a manner that increases the degree to which the structure violates a requirement that caused the structure to be noncomplying.
- (C) A person may increase the height of a building that is a noncomplying structure based on a height requirement of this title if:
  - (1) the increase is made to a portion of the building that:
    - (a) does not exceed the existing maximum height of the building; and
    - (b) complies with the yard setback requirements of this title;
  - (2) the increase does not exceed 15 percent of the existing maximum height of the building; and
  - (3) after modification, the height of the modified portion of the building does not exceed the existing maximum height of the building.
- (D) A person may modify a building that is a noncomplying structure based on a yard setback requirement of this title if:
  - (1) the modified portion of the building:
    - (a) does not extend further into the required yard setback than the existing noncomplying portion of the building; [~~and~~]

1 (b) unless located in a street side yard, is not greater in height than the  
2 existing noncomplying portion of the building; and

3 (b) complies with the height requirements of this title; and

4 (2) the additional length of a modified portion of the building does not exceed  
5 the lesser of 50 percent of the length of the noncomplying portion of the  
6 building or 25 feet measured from the existing building and parallel to the  
7 lot line.

8 (E) Subsection (D) applies to each yard setback requirement with which the  
9 existing building does not comply.

10 (F) A person may modify a noncomplying building once under Subsection (C)  
11 and once under Subsection (D) [of this section]. This section does not  
12 prohibit a person from modifying a building along more than one yard  
13 setback as part of a single project.

14 **PART 6.** Section 25-2-964 (*Restoration And Use Of Damaged Or Destroyed*  
15 *Noncomplying Structures*) of the City Code is amended to read:

16 **§ 25-2-964 RESTORATION AND USE OF DAMAGED OR DESTROYED**  
17 **NONCOMPLYING STRUCTURES.**

18 (A) A person may restore a noncomplying structure that is damaged or destroyed  
19 by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of  
20 any kind if the restoration begins not later than 12 months after the date the  
21 damage or destruction occurs.

22 (B) Except as provided in Section 25-2-963 (*Modification And Maintenance Of*  
23 *Noncomplying Structures*):

24 (1) a structure restored under this section is limited to the same building  
25 footprint, gross floor area, and interior volume as the damaged or  
26 destroyed structure; and

27 (2) a noncomplying portion of the structure may be restored only in the same  
28 location and to the same degree of noncompliance as the damaged or  
29 destroyed structure.

30 [~~A person may restore a damaged or destroyed noncomplying structure if the~~  
31 ~~restoration begins not later than 12 months after the date the damage or destruction~~  
32 ~~occurs.~~]

1 **PART 7.** Section 25-2-1062(D) (*Height Limitations And Setbacks For Small Sites*) of  
2 the City Code is amended to read:

3 (D) The height limitations for a structure are ~~[A person may not construct a~~  
4 ~~structure that exceeds a height of]~~:

5 (1) two stories and ~~[or]~~ 30 feet, if the structure is 50 feet or less from  
6 property:

7 (a) in an SF-5 or more restrictive zoning district; or

8 (b) on which a use permitted in an SF-5 or more restrictive zoning  
9 district is located; or

10 (2) three stories and ~~[or]~~ 40 feet, if the structure is more than 50 feet and not  
11 more than 100 feet from property:

12 (a) in an SF-5 or more restrictive zoning district; or

13 (b) on which a use permitted in an SF-5 or more restrictive zoning  
14 district is located;

15 (3) for a structure more than 100 feet but not more than 300 feet from  
16 property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10  
17 feet of distance in excess of 100 feet from the property zoned SF-5 or  
18 more restrictive; or

19 (4) for a structure more than 300 feet but not more than 540 feet from  
20 property zoned SF-5 or more restrictive, 60 feet plus one foot for each  
21 four feet of distance in excess of 300 feet from the property zoned SF-5 or  
22 more restrictive;

23 **PART 8.** Section 25-2-1063(C) (*Height Limitations And Setbacks For Large Sites*) of  
24 the City Code is amended to read:

25 (C) The height limitations for a structure are ~~[A person may not construct a~~  
26 ~~structure that exceeds a height of]~~:

27 (1) two stories and ~~[or]~~ 30 feet, if the structure is 50 feet or less from  
28 property:

29 (a) in an SF-5 or more restrictive zoning district; or

30 (b) on which a use permitted in an SF-5 or more restrictive zoning  
31 district is located; or

- (2) three stories and [or] 40 feet, if the structure is more than 50 feet and not more than 100 feet from property:
- (a) in an SF-5 or more restrictive zoning district; or
  - (b) on which a use permitted in an SF-5 or more restrictive zoning district is located;
- (3) for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive; or
- (4) for a structure more than 300 feet but not more than 540 feet from property zoned SF-5 or more restrictive, 60 feet plus one foot for each four feet of distance in excess of 300 feet from the property zoned SF-5 or more restrictive.

**PART 9.** Section 25-11-32 (*Building Permit Requirement*) of the City Code is amended to read:

**§ 25-11-32 BUILDING PERMIT REQUIREMENT.**

(A) Unless a technical code exempts an activity from its permitting requirements, a person may not perform the following activities unless the person first obtains the appropriate permit from the building official:

- (1) an activity regulated by Chapter 25-12, Article 1 (*Uniform Building Code*), Article 4 (*Electrical Code*), Article 5 (*Uniform Mechanical Code*), or Article 6 (*Uniform Plumbing Code*);
- (2) constructing or structurally altering a pier or other structure in or along the shores of:
  - (a) Lake Austin below an elevation of 504.9 feet above mean sea level;
  - (b) Town Lake below an elevation of 435.0 feet above mean sea level; or
  - (c) Lake Walter E. Long;
- (3) altering the shoreline or bed of Lake Austin, Town Lake, or Lake Walter E. Long by filling or dredging;
- (4) constructing, altering, or repairing a sidewalk, curb, gutter, or driveway approach on property under a person's control or in public right-of-way adjoining property under a person's control;

- (5) erecting, moving, or structurally altering or repairing an outdoor sign; or  
(6) causing or permitting the activities described in this section to occur.

(B) A building permit does not authorize the demolition or removal of any part of a structure.

**PART 10.** Section 25-11-37 (*Demolition Permit Requirement*) of the City Code is amended to read:

**§ 25-11-37 DEMOLITION PERMIT REQUIREMENT.**

(A) Except as provided in Subsection (B), a [A] person may not demolish all or part of a structure unless the person first obtains a demolition permit from the building official.

(B) A demolition permit is not required to demolish all or part of an interior wall, floor, or ceiling.

(C) [(B)] Except as provided in Article 4 (*Special Requirements For Historic Landmarks*), the building official may issue a permit to demolish all or part of a structure.

**PART 11.** This ordinance takes effect on September 11, 2006.

**PASSED AND APPROVED**

2006

Will Wynn  
Mayor

**APPROVED:**

David Allan Smith  
City Attorney

**ATTEST:**

Shirley A. Gentry  
City Clerk