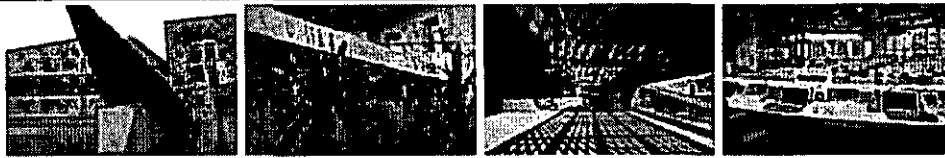


A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, August 31, 2006

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Public Hearings and Possible Actions RECOMMENDATION FOR COUNCIL ACTION

ITEM No. 69

Subject: Conduct a public hearing and consider an ordinance amending Title 25 of the City Code relating to height provisions, compatibility provisions, noncomplying structure provisions, building permit provisions, and the applicability of the residential design and compatibility regulations adopted by Council on June 22, 2006; and additional amendments necessary to reformat the residential design and compatibility regulations adopted by Council on June 22, 2006.

Additional Backup Material

(click to open)

- ☐ Ordinance approved on 6-22-06
- ☐ Draft ordinance of 8-15-06
- ☐ Height Limit Exceptions
- ☐ Staff Summary

For More Information: Tina Bui, 974-2755

Boards and Commission Action: (Recommended by Planning Commission)

Prior Council Action: 6/22/06 - Council approved Residential Regulations

The proposed Code amendments were initiated by the City Council on June 22, 2006 in response to the work of the Residential Development Regulation Task Force ("McMansion Task Force"). Earlier this Spring, when the Task Force was devising recommendations for single-family and similar residential construction and remodels, the Task Force had also proposed amendments to other parts of the Land Development Code. However, the Planning Commission and Council were not posted to consider amendments that would affect non-residential uses so the Task Force's recommendations in these areas had to be deferred. In addition to approving the residential regulations on June 22, 2006, the Council initiated the following Code amendments pursuant to the previous recommendations of the Task Force:

1. A reformat of the new residential development regulations (the "McMansion ordinance") via adoption of a rewrite provided by Clarion Associates, including additions not yet approved by Council that would add bed and breakfast (group 2) as an affected use; further define setback planes for second-story additions; and clarify that "contributing" structures include such structures in National Register historic districts.
2. Amendments to how the height of a structure or a setback plane is measured.
3. Amendments that govern when and how one can rebuild and modify a noncomplying structure.
4. Amendments to building and demolition permit provisions.

The proposed amendments regarding height measurement and noncomplying structures are consistent with the provisions approved by the Council in June to apply within the new residential regulations. Many of the proposed changes regarding height measurement, noncomplying structures, and demolition permit provisions also reflect existing practices by WPDR. Additionally, the amendments to height measurement are generally consistent with

amendments that the Watershed Protection and Development Review (WPDR) Department had considered proposing prior to the creation of the Task Force.

Code Amendment #C20-06-011.

ORDINANCE AMENDMENT REVIEW SHEET

Amendment Case #: C2O-06-011

Description

Conduct a public hearing and consider an ordinance amending Title 25 of the City Code relating to height provisions; compatibility provisions; noncomplying structure provisions; building permit provisions; the applicability of the residential design and compatibility regulations adopted by Council on June 22, 2006; and additional amendments necessary to reformat the residential design and compatibility regulations adopted by Council on June 22, 2006.

Background

The proposed Code amendments were initiated by the City Council on June 22, 2006 in response to the work of the Residential Development Regulation Task Force ("McMansion Task Force"). Earlier this spring when the Task Force was devising recommendations for single-family and similar residential construction and remodels, the Task Force had also proposed amendments to other parts of the Land Development Code. However, the Planning Commission and Council were not posted to consider amendments that would affect non-residential uses so the Task Force's recommendations in these areas had to be deferred. The Council then initiated the Code amendments on June 22.

As they had prior, the Task Force now recommends

- A reformat of the new residential development regulations (the "McMansion ordinance") via adoption of the rewrite provided by Clarion Associates
- Amendments to how height is measured
- Amendments that govern when and how one can rebuild and modify a noncomplying structure
- Clarification regarding building and demolition permits.

REFORMATTING & APPLICABILITY OF THE NEW REGULATIONS

On June 22, the Council directed staff to reformat the new residential development regulations with the assistance of Clarion Associates, a private land use planning firm. Clarion was tasked with reformatting the regulations and providing illustrative diagrams. Clarion's draft of the regulations is attached and is proposed as text that would be directly inserted into Chapter 25-2 of the City's Code as a new Subchapter F. Clarion continues to reformat their draft to add and amend illustrations and to reword text so that it reflects the intent of the Task Force's recommendations and what Council approved on June 22. Therefore the draft is subject to non-substantive change by the time of City Council review.

Within the current Clarion draft, there are three sections in which language that was not approved by the Council has been *added*. The Task Force recommends these changes to reflect the intent of what they had originally proposed but was not captured in the ordinance that went to Council for approval in June. The additional language

- Expands the applicability of the new regulations by adding bed and breakfast (group 2) as a use subject to the new regulations. This is consistent with the already approved regulation of a bed and breakfast (group 1) use (see Clarion draft page 1)
- Specifies that for second-story additions to a one-story building, a higher setback plane over the normal setback plane is allowed but *only* for the portion of the addition over the *existing* footprint of the building (Clarion draft page 10). (The intent is to encourage additions over demolitions.)
- Specifies that if a structure is located in a Local or National Historic District and it is a "contributing" structure to that district, no waiver may be granted by the Residential Design & Compatibility Commission for an addition or remodel if the waiver would render the structure non-contributing to the District (Clarion draft page 15). (The original McMansion ordinance addressed only local contributing structures.)

Since the Clarion rewrite replaces the McMansion ordinance, that ordinance is proposed for repeal. Therefore, some of the provisions of that ordinance must be readopted because they will not be included in the Clarion rewrite. These provisions proposed for re-adoption are worded exactly as they were when Council approved them as part of the new residential regulations adopted on June 22. These provisions are listed in the proposed draft ordinance and include

- The creation of the Residential Design and Compatibility Commission (the body authorized to grant modifications to the residential development regulations for specific projects)

CODE AMENDMENT C20-06-011

["McMansion ordinance" reformat and applicability; amendments related to height measurement, compatibility, noncomplying structures, and building and demolition permits]

- The requirements for connecting the two units of a duplex
- The provision that a neighborhood planning area be able to modify certain elements of the new regulations within their planning area
- The requirement that the new Residential Design and Compatibility Commission hold an organizational meeting.

See

- *Attachment 1: Proposed Clarion draft dated August 18*
- *Attachment 2: Proposed draft ordinance dated 8/15/2006 2:06 PM*
- *Attachment 3: Approved ordinance no. 20060622-22 ("McMansion ordinance")*

HEIGHT MEASUREMENT

Regarding height measurement, the following Code amendments are proposed and will apply to all development. The amendments

- Redefine how height is measured so that it is measured from the lower of natural or finished grade (the City currently measures from finished grade.)
- Specify that for a stepped or terraced building, the height of each segment is determined individually (this is an existing practice)
- Specify that for general height measurement and under compatibility regulations (Land Development Code (LDC) Article 10), maximum height limits are limited by *both* the number of feet and number of stories if both measurements are prescribed, even when the measurement is conjoined with "or" (existing practice)
- Prohibit the exceptions (per section 25-2-531; e.g., chimneys, antennas, cupolas, safety features) to zoning district height limits within the Capitol View Corridor (existing practice)

The amendments to height measurement are consistent with the provisions already approved by Council to apply within the new residential regulations.

Additionally, prior to the creation of the Task Force, Watershed Protection and Development Review (WPDR) staff had been considering changes to how the City measures height. The changes recommended by the Task Force are generally consistent with what WPDR had considered proposing previously. While WPDR had previously considered proposing that height be measured only from natural grade (again, current practice is from finished grade), the Task Force recommended that the City measure from the lower of natural or finished grade. The Task Force based this recommendation on their research of other cities that had implemented similar regulations after problems arose when height was measured only by natural grade.

See Attachment 2: Proposed draft ordinance (pages 2-3).

~~*See Attachment 4, LDC Section 25-2-531.*~~

NONCOMPLYING STRUCTURE PROVISIONS

Code amendments are proposed to the regulations that govern how noncomplying structures may be modified or maintained, and when and how they can be restored if damaged or destroyed.

The proposed amendments add language to the Code to

- Specify that when a person modifies a building that is noncomplying because it does not meet the minimum required yard setback(s), the additional length of the modified portion of the building does not exceed the lesser of 50 percent of the length of the noncomplying portion of the building or 25 feet measured from the existing building and parallel to the lot line (addition of the underlined language is the proposal).
- Specify that when a person modifies a noncomplying building that is noncomplying based on the minimum yard setback requirement, the allowed modification cannot violate the height limit
- And conversely, specify that when a person modifies a noncomplying building that is noncomplying based on the height limit, the allowed modification cannot violate the yard setback requirement

CODE AMENDMENT C20-06-011

["McMansion ordinance" reformat and applicability; amendments related to height measurement, compatibility, noncomplying structures, and building and demolition permits]

- List the specific circumstances under which a structure can be restored to its prior noncompliant state (for example, fires, floods, or accidents of any kind) (This language was removed when the 'plain English' rewrite of the Code occurred in the 1980s.)
- Limit a structure that is restored under these circumstances to the same building footprint, gross floor area, interior volume, location and previous degree of noncompliance.

The amendments regarding noncomplying structures are worded exactly as they were within the new residential regulations approved by Council in June.

See Attachment 2: Proposed draft ordinance (pages 4-5).

BUILDING AND DEMOLITION PERMITS

Code amendments are also proposed to

- Specify that a building permit does not authorize demolition or removal of any part of a structure
- Clarify that a demolition permit is not required to modify all or part of an interior floor, wall, or ceiling (existing practice).

See Attachment 2: Proposed draft ordinance (page 9).

Deferred Issues

Though notice has been sent out to also include consideration of the applicability of the new residential regulations; residential occupancy limits; use and site development regulations for flag lots; and modification of the new residential regulations in neighborhoods areas other than neighborhood plan zoning districts, the Task Force deferred discussion of these items in order to complete work on the currently proposed amendments. When the Task Force makes recommendations on these issues, they will be brought back to the Planning Commission and to the City Council.

Attachments:

- Attachment 1: Draft of Clarion reformat of new residential development regulations, dated August 18
- Attachment 2: Draft ordinance, dated 8/15/2006 2:06 PM
- Attachment 3: Ordinance 20060622-22 ("McMansion ordinance")
- ~~Attachment 4: Section 25-2-531 (exceptions allowed to zoning district height limits)~~

Other Commission Action: Recommended by the Residential Development Regulation Task Force ("McMansion Task Force")

Staff Recommendation: Pending

Planning Commission Action: August 22, 2006.

Motion made to recommend the draft ordinance and Clarion rewrite with the following amendments:

- Direct staff to add language to the draft ordinance to amend section 25-2-963 to allow a 2nd floor to be added to a noncomplying structure that does not meet the current minimum required yard setback for the street side yard, so that the 2nd story addition may encroach into the street side yard setback to the same extent as the existing noncompliant 1st floor (this provision applies to corner lots only.)
- Recommend that Council consider any additional language recommended by staff regarding the height definition as it affects affordable housing.
- (J. Reddy, G. Stegeman 2nd: 5-2 (D. Sullivan and M. Dealey no)

City Council Action: August 31, 2006

1st reading
2nd reading
3rd reading

City Staff: Tina Bui, NPZD, (512)974.2755, tina.bui@ci.austin.tx.us; Information online at http://www.ci.austin.tx.us/zoning/sf_regs.htm



DRAFT

City of Austin

Neighborhood Housing and Community Development

P.O. Box 1088, Austin, TX 78767

(512) 974-3100 ♦ Fax (512) 974-3112 ♦ www.cityofaustin.org/housing

AFFORDABILITY IMPACT STATEMENT

Proposed Code Amendment/Rule: Residential development regulations reformat, applicability, and neighborhood modification; Amendments related to height, noncomplying structures, and building and demolition permits

Proposed Changes Impacting Housing Affordability: New definition of "height" would be applied to multi-family and "mixed-use" development and would, in some cases, reduce the number of units able to be created, thus decreasing the number of affordable units that may be created.

Positive, Negative or No Impact: Negative

Explanation:

NHCD is concerned for two reasons (1) impact on affordable multifamily apartments and condos, and (2) sets precedent for code exemptions not inline with national standards.

The current Zoning Code and Building Code language results in "height in stories" and "height in feet" being measured from finished grade. Neighborhoods are concerned that some builders have increased the height of their building beyond what is allowed by Zoning Code by installing a planter box or other fill material to raise the height of their site. We agree that the "height" definition should be changed to close this loophole.

The Task Force recommends measuring "height" from "natural grade" or finished grade, whichever is lower.

The proposed change goes beyond closing this loophole and establishes the measuring point not at the first floor, but instead at the floor level of the basement adjacent to the lowest natural grade. This means that some multi-family or mixed-use building now considered less than 60 feet in height and 5 stories tall would be considered more than 60 feet in height and 6 stories tall and thus not allowed under proposed height definitions.

This impacts affordability by reducing the number of units allowed. For example, in the 50-65 foot zone of the University Neighborhood Overlay, NHCD preliminary review shows that this new definition would reduce the height for 8 buildings expected to yield 830 total units and 83 affordable units. If the height is reduced by 1 story, then the number of units would be expected to decrease by 1/6 or 17%. Given that a developer must meet revenue

(rent/sales) projections to cover costs, the loss of overall units will reduce the number of affordable units.

This scenario would also apply in a Vertical Mixed Use development in commercial corridors, as the ordinance is currently envisioned. Stakeholder support for an on-site affordability requirement in Vertical Mixed-Use is based on the current method for defining "height" in the Zoning Code and Building Code. If the new definition of "height" were adopted, VMU builders would no longer be able to build four-story residential apartments or condominiums above a one-story concrete and steel first story and a one-story basement.

In summary, the proposed change in definition in "height" could reduce housing affordability in multi-family and mixed-use development.

Alternative Language to Mitigate Negative Impacts:

Limit "height" definition to single-family, duplex, and two-family residential, or adopt International Building Code definitions of height by reference in the proposed ordinance.

Other concerns:

The proposed ordinance will readopt standards for single-family and duplex development within the Urban Core approved by the City Council on June 22, 2006. S.M.A.R.T.

Housing™ builders at the former Robert Mueller Municipal Airport and on sites zoned SF-6 and meet condominium standards will continue to be exempt from the proposed ordinance. Other non-profit and for-profit builders in the Urban Core continue to identify the following impediments previously identified in earlier Affordability Impact Statements and public hearing testimony:

1. All of the two-story plans for the selected NHCD/AHFC Montopolis subdivision – some homes as small as 1,102 square feet will not be in compliance with the new ordinance due to sidewall lengths greater than 32 feet. The plans meet interim ordinance standards and previous code standards.
2. The building envelope requirements of 25-2-566(K) may limit the feasibility of two-story construction on narrower lots. On a 40'-50' lot, there is no additional space for a side yard greater than 5', thus limiting the building height to 20' at the setback line. The plans meet interim ordinance standards and previous code standards.
3. In addition to proposed plans for two-story S.M.A.R.T. Housing single-family homes not complying with new ordinance standards, one Urban Core S.M.A.R.T. Housing™ builder reports compliance with FAR ratios on smaller lots. The plans comply with interim ordinance standards and previous code standards, and would comply with a 23' height limitation.
4. Neighborhood specific standards can be applied to Urban Home lots, Cottage lots, and small non-conforming lots and can result in the prohibition of single-family housing that would comply with the interim ordinance standard and previous code standard.
5. Submittal requirements for smaller homes in the Urban Core that are less than 32' in height and less than 2,300 square feet of gross floor area are the same as larger homes. Reducing submittal requirements for smaller homes could reduce design costs associated with complying with the new ordinance.

6. A non-profit organization or the Austin Housing Finance Corporation can no longer demolish a dilapidated house at the owner's request and replace the older home with a new home that is less than 10% larger than the original home unless the new home complies with the new ordinance. This reconstruction activity was allowed under the interim ordinance and previous code standards.

Date Draft Received: August 11, 2006

Date Impact Statement Prepared: August 22, 2006

Director's Signature Paul Hays

From: Gary Mefford
Sent: Tuesday, August 15, 2006 2:03 PM
To: Bui, Tina; Guernsey, Greg
Subject: Proposed Code Amendments

Tina/Greg,

I am writing regarding the proposed code amendment that would revise the way building height is measured and am requesting that consideration be given to exempting the properties within the recently adopted University Neighborhood Overlay. Simmons Vedder & Company currently has projects that are being reviewed for building permit that would have been impacted had we not submitted prior to discussion and resolution of this proposed amendment. While the amendment will not have an impact on these two projects it will on the next tower which may result in our losing an entire floor of the building; something that I believe is counter to the intent of the UNO to provide higher density. With the adoption of this new height interpretation you will in fact, be limiting or reducing something that was one of the primary goals of the stakeholders and the UNO ordinance.

Thanks,
Gary

Gary Mefford
Simmons Vedder & Company

From: Mike Mchone

Sent: Friday, August 18, 2006 5:00 PM

To: Zapalac, George; Bui, Tina

Cc: Hersh, Stuart; 'Gary Mefford'; Mike Mchone; 'Rick Hardin'

Subject: Proposed change in definition of measurement of height

Hi George and Tina,

The following is a short list of the projects in the UNO Overlay District that would have or will be negatively impacted by the proposed change:

Texan West Campus, 2616 Salado

Texan Shoal Creek, 2502 Leon

The Block on Leon, 2510 Leon

The Block on 28th Street, 701 W. 28th Street

Sterling West Campus, 2704 Rio Grande

The Quarters Projects, at 22nd and Pearl,

PRM- Stonehill Project at 2501 Longview

First Worthing Project at Pearl and MLK (the old medical/dental center)

These are just the projects in the 50-65 ft height districts, remember all of these are S.M.A.R.T.

Housing project with Street ROW improvements required, and design guidelines that must be followed. I have not had the time to evaluate the impact on the projects in the higher height districts; however any reduction in the number of units that can be built as a result of a reduction in overall height will have a negative impact on affordability and the feasibility of constructing the project and could result in project termination.

Thanks,

Mike

§ 25-2-531 HEIGHT LIMIT EXCEPTIONS.

(Section 25-2-531 is referenced in The proposed draft ordinance)

(A) This section provides exceptions to zoning district height limits.

(B) Subsection (C) applies to:

(1) parapet walls, chimneys, vents, and mechanical or safety features including fire towers, stairways, elevator penthouses, heating or cooling equipment, and protective covers; and

(2) ornamental towers, cupolas, domes, and spires that are not designed for occupancy.

(C) A structure described in Subsection (B) may exceed a zoning district height limit by the greater of:

(1) 15 percent;

(2) the amount necessary to comply with a federal or state regulation;

(3) for a stack or vent, the amount necessary to comply with generally accepted engineering standards; or

(4) for a spire, 30 percent.

(D) The height of a home radio or television receiving antenna or a flagpole may not exceed the lesser of:

(1) a .50 feet; or

(2) if attached to a building, 25 feet above the building; or

(3) if located on the ground, 125 percent of the zoning district height limit.

(E) A radio tower operated by a licensed amateur radio operator may not exceed a height of 60 feet plus 15 feet for antennae. The Land Use Commission may approve a greater height as a conditional use.

(F) An antenna located on a building in a non-residential zoning district may exceed the zoning district height limit by not more than 20 feet.

Source: Section 13-2-608; Ord. 990225-70; Ord. 010607-8; Ord. 031211-11; Ord. 040826-67.

This is the latest draft since the 08/02/2006 version.
See page 4 for the addition.

ORDINANCE NO.

1 AN ORDINANCE AMENDING CHAPTER 2-1 OF THE CITY CODE TO ADD
2 ARTICLE 53 RELATING TO THE RESIDENTIAL DESIGN AND
3 COMPATIBILITY COMMISSION; AMENDING TITLE 25 OF THE CITY
4 CODE RELATING TO HEIGHT DEFINITION AND MEASUREMENT, THE
5 CAPITOL VIEW CORRIDOR OVERLAY DISTRICT, DUPLEX RESIDENTIAL
6 USES, RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS,
7 NONCOMPLYING STRUCTURES, COMPATIBILITY HEIGHT
8 LIMITATIONS, ORDINANCE REQUIREMENTS FOR NEIGHBORHOOD
9 PLAN COMBINING DISTRICTS, BUILDING PERMITS, AND DEMOLITION
10 PERMITS; PROVIDING FOR AN ORGANIZATIONAL MEETING OF THE
11 RESIDENTIAL DESIGN AND COMPATIBILITY COMMISSION; AND
12 REPEALING ORDINANCE NUMBERS 20060309-058 AND 20060622-022.
13

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

15
16 PART 1. Chapter 2-1 (*Boards And Commissions*) of the City Code is amended to add
17 Article 53 to read:

18 **ARTICLE 53. RESIDENTIAL DESIGN AND COMPATIBILITY COMMISSION.**

19 **§ 2-1-531 CREATION; MEMBERSHIP.**

- 20 (A) The Residential Design and Compatibility Commission is created and
21 composed of nine members appointed by the city council.
- 22 (B) To obtain a broad range of community viewpoints, the commission shall be
23 appointed from a diverse group of persons having knowledge of massing,
24 scale, and compatibility issues in residential neighborhoods, and shall include:
- 25 (1) five residential design professionals; and
26 (2) four citizens at large.

27 **§ 2-1-532 TERMS.**

- 28 (A) Each commission member shall be appointed to serve a two-year term.
- 29 (B) Five commission members shall be appointed to terms that expire on October
30 1 of even-numbered years and four commission members shall be appointed to
31 terms that expire on October 1 of odd-numbered years.

1 **§ 2-1-533 QUORUM.**

2 Five members of the commission constitute a quorum for the conduct of business.

3 **§ 2-1-534 DUTIES AND RESPONSIBILITIES.**

4 The Residential Design and Compatibility Commission shall make determinations
5 on requested modifications of certain residential design standards for specific
6 developments, as prescribed by Chapter 25-2, Subchapter F (*Residential Design And*
7 *Compatibility Standards*).

8 **PART 2.** Section 25-1-21(46) (*Definitions*) of the City Code is amended to read:

9 (46) HEIGHT means the height of a structure and is measured in accordance
10 with Section 25-1-24 (*Height Measurement*). ~~[, when used in reference~~
11 ~~to a building, means the vertical distance from the average of the~~
12 ~~highest and lowest grades adjacent to the building to:~~

13 ~~(a) for a flat roof, the highest point of the coping;~~

14 ~~(b) for a mansard roof, the deck line;~~

15 ~~(c) or a pitched or hip roof, the average height of the highest gable; or~~

16 ~~(d) for other roof styles, the highest point of the building.]~~

17 **PART 3.** Chapter 25-1 (*General Requirements And Procedures*) of the City Code is
18 amended to add Section 25-1-24 to read:

19 **§ 25-1-24 HEIGHT MEASUREMENT.**

20 (A) This section prescribes height measurement for a building or setback plane.

21 (B) In this subsection, NATURAL GRADE is the topography of a site before it is
22 modified by moving earth, adding or removing fill, or installing a berm,
23 retaining wall, or architectural or landscape feature. Natural grade is
24 determined by reference to an on-ground survey, City-approved topographic
25 map, or other information approved by the director.

26 (C) The director may require an applicant to provide a third-party report that
27 shows the natural grade of a site.

28 (D) The height of a building or setback plane is measured from the lower of natural
29 grade or finished grade, except the height is measured from finished grade if:

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

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

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

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

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

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

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

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

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

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

PART 4. Section 25-2-642 (*Capital View Corridor Overlay District Regulations*) is amended to amend Subsection (B) to read:

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

PART 5. Section 25-2-773 (*Duplex Residential Use*) of the City Code is amended to add Subsection (D) to read:

(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.

1 **PART 6.** Chapter 25-2 of the City Code is amended to add Subchapter F as shown on
2 Attachment "A".

3 **PART 7.** Section 25-2-963 (*Modification And Maintenance Of Noncomplying*
4 *Structures*) of the City Code is amended to read:

5 **§ 25-2-963 MODIFICATION AND MAINTENANCE OF NONCOMPLYING**
6 **STRUCTURES.**

7 (A) Except as provided in Subsection (B) [~~of this section~~], a person may modify or
8 maintain a noncomplying structure.

9 (B) Except as provided in Subsections (C) and (D) [~~of this section~~], a person may
10 not modify or maintain a noncomplying structure in a manner that increases
11 the degree to which the structure violates a requirement that caused the
12 structure to be noncomplying.

13 (C) A person may increase the height of a building that is a noncomplying structure
14 based on a height requirement of this title if:

15 (1) the increase is made to a portion of the building that:

16 (a) does not exceed the existing maximum height of the building; and

17 (b) complies with the yard setback requirements of this title;

18 (2) the increase does not exceed 15 percent of the existing maximum height of
19 the building; and

20 (3) after modification, the height of the modified portion of the building does
21 not exceed the existing maximum height of the building.

22 (D) A person may modify a building that is a noncomplying structure based on a
23 yard setback requirement of this title if:

24 (1) the modified portion of the building:

25 (a) does not extend further into the required yard setback than the existing
26 noncomplying portion of the building; and

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

28 This language
29 was
30 accidentally
31 omitted
in the 08/02
draft

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

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

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

7 **PART 8.** Section 25-2-964 (*Restoration And Use Of Damaged Or Destroyed*
8 *Noncomplying Structures*) of the City Code is amended to read:

9 **§ 25-2-964 RESTORATION AND USE OF DAMAGED OR DESTROYED**
10 **NONCOMPLYING STRUCTURES.**

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

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

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

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

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

26 **PART 9.** Section 25-2-1062(D) (*Height Limitations And Setbacks For Small Sites*) of
27 the City Code is amended to read:

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

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

32 (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; 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 10. Section 25-2-1063(C) (*Height Limitations And Setbacks For Large Sites*) of the City Code is amended to read:

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

(1) two stories and [or] 30 feet, if the structure is 50 feet or less 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; 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

1 feet of distance in excess of 100 feet from the property zoned SF-5 or
2 more restrictive; or

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

7 **PART 11.** Section 25-2-1406 (*Ordinance Requirements*) of the City Code is amended to
8 read:

9 **§ 25-2-1406 ORDINANCE REQUIREMENTS:**

10 An ordinance zoning or rezoning property as a NP combining district:

- 11 (1) must prescribe the special uses described in Section 25-2-1403 (*Special*
12 *Uses*) that are permitted in the district;
- 13 (2) must describe the location of each residential infill special use,
14 neighborhood urban center special use, or neighborhood mixed use
15 building special use, if any;
- 16 (3) may restrict the time of day during which a business in a neighborhood
17 mixed use building special use may be open to the public;
- 18 (4) may restrict a corner store special use, cottage special use, secondary
19 apartment special use, or urban home special use, if any, to a designated
20 portion of the district;
- 21 (5) for a single-family residential use or a secondary apartment special use on
22 an existing legal lot:
- 23 (a) may reduce the required minimum lot area to 2,500 square feet;
24 (b) may reduce the required minimum lot width to 25 feet; and
25 (c) for a lot with an area of 4,000 square feet or less, may increase the
26 maximum impervious coverage to 65 percent;
- 27 (6) may apply the requirements of Section 25-2-1602 (*Front Porch Setback*),
28 Section 25-2-1603 (*Impervious Cover and Parking Placement*
29 *Requirements*), or Section 25-2-1604 (*Garage Placement*) to the district
30 or a designated portion of the district; [and]

1 (7) may restrict front yard parking by including all or a portion of the district
2 in the restricted parking area map described in Section 12-5-29 (*Front or*
3 *Side Yard Parking*); and

4 (8) may modify the following requirements of Subchapter F (*Residential*
5 *Design And Compatibility Standards*):

6 (a) the maximum floor-to-area ratio and maximum square footage of
7 gross floor area prescribed by Subchapter F (*Residential Design And*
8 *Compatibility Standards*);

9 (b) the maximum linear feet of gables or dormers protruding from the
10 setback plane;

11 (d) the height of the side and rear setback planes; and

12 (e) the minimum front yard setback requirement.

13 **PART 12.** Section 25-11-32 (*Building Permit Requirement*) of the City Code is amended
14 to read:

15 **§ 25-11-32 BUILDING PERMIT REQUIREMENT.**

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

19 (1) an activity regulated by Chapter 25-12, Article 1 (*Uniform Building*
20 *Code*), Article 4 (*Electrical Code*), Article 5 (*Uniform Mechanical Code*),
21 or Article 6 (*Uniform Plumbing Code*);

22 (2) constructing or structurally altering a pier or other structure in or along the
23 shores of:

24 (a) Lake Austin below an elevation of 504.9 feet above mean sea level;

25 (b) Town Lake below an elevation of 435.0 feet above mean sea level; or

26 (c) Lake Walter E. Long;

27 (3) altering the shoreline or bed of Lake Austin, Town Lake, or Lake Walter
28 E. Long by filling or dredging;

29 (4) constructing, altering, or repairing a sidewalk, curb, gutter, or driveway
30 approach on property under a person's control or in public right-of-
31 way adjoining property under a person's control;

1 (5) erecting, moving, or structurally altering or repairing an outdoor sign; or

2 (6) causing or permitting the activities described in this section to occur.

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

5 **PART 13.** Section 25-11-37 (*Demolition Permit Requirement*) of the City Code is
6 amended to read:

7 **§ 25-11-37 DEMOLITION PERMIT REQUIREMENT.**

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

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

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

16 **PART 14.** The Residential Design and Compatibility Commission members shall
17 conduct an organizational meeting as soon as practicable after their appointment. At the
18 first meeting of the commission, the members shall draw lots to determine whose terms
19 shall expire on October 1 of even-numbered years and whose terms shall expire on
20 October 1 of odd-numbered years.

21 **PART 15.** Ordinance Number 20060309-058 is repealed, except that Part 6 (*Waiver*) is
22 continued in effect and applies to a waiver application filed before October 1, 2006.

23 **PART 16.** Ordinance Number 20060622-022 is repealed.

1 **PART 17.** This ordinance takes effect on October 1, 2006.

2 **PASSED AND APPROVED**

3
4
5
6 _____, 2006

§
§
§

7 Will Wynn
8 Mayor

9
10
11 **APPROVED:** _____
12 David Allan Smith
13 City Attorney

14
15 **ATTEST:** _____
16 Shirley A. Gentry
City Clerk

ORDINANCE NO. 20060622-022

AN ORDINANCE AMENDING CHAPTER 2-1 OF THE CITY CODE TO ADD ARTICLE 53 RELATING TO THE RESIDENTIAL DESIGN AND COMPATIBILITY COMMISSION; ADDING SECTION 25-2-566 TO THE CITY CODE RELATING TO SPECIAL REQUIREMENTS FOR CERTAIN RESIDENTIAL DISTRICTS; AMENDING SECTION 25-2-773 OF THE CITY CODE RELATING TO DUPLEX RESIDENTIAL USE; AMENDING SECTIONS 25-2-963 AND 25-2-964 OF THE CITY CODE RELATING TO NONCOMPLYING STRUCTURES; AMENDING SECTION 25-2-1406 OF THE CITY CODE RELATING TO NEIGHBORHOOD PLAN COMBINING DISTRICTS; PROVIDING FOR AN ORGANIZATIONAL MEETING OF THE RESIDENTIAL DESIGN AND COMPATIBILITY COMMISSION; AND REPEALING ORDINANCE NUMBER 20060309-058 RELATING TO DEVELOPMENT REGULATIONS FOR CERTAIN SINGLE-FAMILY, SINGLE-FAMILY ATTACHED, TWO-FAMILY, SECONDARY APARTMENT, AND DUPLEX STRUCTURES.

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

PART 1. Chapter 2-1 (*Boards And Commissions*) of the City Code is amended to add Article 53 to read:

ARTICLE 53. RESIDENTIAL DESIGN AND COMPATIBILITY COMMISSION.

§ 2-1-531 CREATION; MEMBERSHIP.

- (A) The Residential Design and Compatibility Commission is created and composed of nine members appointed by the city council.
- (B) To obtain a broad range of community viewpoints, the commission shall be appointed from a diverse group of persons having knowledge of massing, scale, and compatibility issues in residential neighborhoods, and shall include:
 - (1) five residential design professionals; and
 - (2) four citizens at large.

§ 2-1-532 TERMS.

- (A) Each commission member shall be appointed to serve a two-year term.

- (B) Five commission members shall be appointed to terms that expire on June 1 of even-numbered years and four commission members shall be appointed to terms that expire on June 1 of odd-numbered years.

§ 2-1-533 QUORUM.

Five members of the commission constitute a quorum for the conduct of business.

§ 2-1-534 DUTIES AND RESPONSIBILITIES.

The Residential Design and Compatibility Commission shall make determinations on requested modifications of certain residential design standards for specific developments, as prescribed by Section 25-2-566 (*Special Regulations For Certain Residential Districts*) of the City Code.

PART 2. Chapter 25-2 (*Zoning*) of the City Code is amended to add Section 25-2-566 to read:

§ 25-2-566 SPECIAL REGULATIONS FOR CERTAIN RESIDENTIAL DISTRICTS.

(A) Except as provided in Subsection (B), this section applies to property that is:

(1) within the area bounded by:

- (a) Highway 183 from Loop 360 to Ben White Boulevard;
- (b) Ben White Boulevard from Highway 183 to Loop 360;
- (c) Loop 360 from Ben White Boulevard to Loop 1;
- (d) Loop 1 from Loop 360 to the Colorado River;
- (e) the Colorado River from Loop 1 to Loop 360; and
- (f) Loop 360 from the Colorado River to Highway 183; and

(2) used for a:

- (a) bed and breakfast (group 1) residential use;
- (b) cottage special use;
- (c) duplex residential use;
- (d) secondary apartment special use;
- (e) single-family attached residential use;

- (f) single-family residential use;
- (g) small lot single-family residential use;
- (h) two-family residential use; or
- (i) urban home special use.

(B) This section does not apply to:

- (1) a lot designated as a single-family residence small lot (SF-4A) district unless the lot is adjacent to property designated as a single-family residence standard lot (SF-2) district or family residence (SF-3) district; or
- (2) the approximately 698.7 acres of land known as the Mueller Planned Unit Development, which was zoned as a planned unit development (PUD) district by Ordinance Number 040826-61.

(C) To the extent of conflict, this section supersedes:

- (1) Section 25-2-492 (*Site Development Regulations*);
- (2) Section 25-2-555 (*Family Residence (SF-3) District Regulations*);
- (3) Section 25-2-773 (*Duplex Residential Use*);
- (4) Section 25-2-774 (*Two-Family Residential Use*);
- (5) Section 25-2-778 (*Front Yard Setback For Certain Residential Uses*);
- (6) Section 25-2-779 (*Small Lot Single-Family Residential Uses*); and
- (7) Section 25-4-232 (*Small Lot Subdivisions*).

(D) To the extent of conflict, the following provisions supersede this section:

- (1) Section 25-2-1424 (*Urban Home Regulations*);
- (2) Section 25-2-1444 (*Cottage Regulations*);
- (3) Section 25-2-1463 (*Secondary Apartment Regulations*); or
- (4) the provisions of an ordinance designating property as a:
 - (a) neighborhood plan (NP) combining district;
 - (b) neighborhood conservation (NC) combining district; or
 - (c) historic area (HD) combining district.

(E) In this section, GROSS FLOOR AREA has the meaning assigned by Section 25-1-21 (*Definitions*), except:

(1) the term:

(a) includes:

- (i) the portion of a second or third story of a building that is covered by a roof, including a porch, portico, breezeway, passageway, or corridor;
- (ii) a mezzanine or loft; and
- (iii) the covered portion of a parking area, except for:
 - 1. up to 450 square feet of:
 - a. a detached rear parking area that is separated from the principal structure by not less than 10 feet; or
 - b. a parking area that is open on two or more sides, if it does not have habitable space above it; and
 - 2. up to 200 square feet of an attached parking area if it used to meet the minimum parking requirement; and

(b) excludes:

- (i) a ground floor porch, including a screened porch;
- (ii) a habitable portion of a building that is below grade if:
 - 1. it does not extend beyond the first story footprint; and
 - 2. the finished floor of the first story is not more than three feet above the average elevation at the intersections of the minimum front yard setback line and the side property lines; and
- (iii) a habitable portion of an attic, if:
 - 1. the roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;
 - 2. it is fully contained within the roof structure;
 - 3. it has only one floor;

4. it does not extend beyond the footprint of the floors below;
5. it is the highest habitable portion of the building; and
6. 50 percent or more of the area has a ceiling height of seven feet or less; and

(2) an area with a ceiling height greater than 15 feet is counted twice.

(F) This subsection prescribes height measurement for a building or setback plane.

(1) 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.

(2) The director may require an applicant to provide a third-party report that shows the natural grade of a site.

(3) 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:

- (a) the site's grade was legally modified before October 1, 2006; or
- (b) the site's grade is modified to elevate it out of the 100-year floodplain.

(4) The height of a building is measured vertically 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) for a pitched or hip roof, the average height of the highest gable;
- (d) for other roof styles, the highest point of the building.

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

(G) Maximum building height is 32 feet. Section 25-2-531 (*Height Limit Exceptions*) does not apply, except for a chimney, vent, antenna, or energy conservation or production equipment or feature not designed for occupancy.

(H) Except for the principal structure, the minimum rear yard setback is five feet if the lot has a rear lot line adjacent to an alley.

(I) This subsection prescribes minimum front yard setbacks.

(1) In this subsection:

(a) An average front yard setback is determined based on the setbacks of each principal residential structure that is built within 50 feet of its front lot line.

(b) Except as provided in Subparagraph (c), the four structures that are closest to the subject property and on the same side of the block are used in the calculation. If there are less than four structures on the same side of the block, the lesser number of structures is used in the calculation.

(c) If there are no structures on the same side of the block, the four structures that are closest to the subject property and across the street are used in the calculation. If there are less than four structures across the street, the lesser number is used in the calculation.

(2) The minimum front yard setback is the lesser of:

(a) the minimum front yard setback prescribed by the other provisions of this title; or

(b) the average front yard setback described in Paragraph (1), if an average may be determined under Paragraph (1).

(J) This subsection applies to a side wall of a building if the side wall is more than 15 feet high and is an average distance of 15 feet or less from an interior lot line. The side wall may not extend in an unbroken plane for more than 32 feet along a side lot line. To break the plane, a perpendicular wall articulation of not less than four feet, for a distance along the side property line of not less than 10 feet, is required.

(K) Development on a site is limited to the greater of 0.4 to 1 floor-to-area ratio or 2,300 square feet of gross floor area.

(L) This subsection prescribes side and rear setback planes.

(1) In this subsection, BUILDING LINE means a line that is parallel to the front lot line and that intersects the principal residential structure at the point where the structure is closest to the front lot line.

(2) Except as provided in Paragraph (3), an inwardly sloping 45 degree angle side setback plane begins at a horizontal line 15 feet directly above the side property line. The 15-foot height of the horizontal line is established for 40-foot deep portions of the lot, beginning at the building line and extending to the rear of the lot, except that the last portion at the rear of the lot may be less than 40 feet deep.

(a) For the first portion, the 15-foot height of the horizontal line is measured at the highest of the elevations of the four intersections of the side lot lines, the building line, and a line 40 feet from and parallel to the building line.

(b) For successive portions other than the last portion, the 15-foot height of the horizontal line is measured at the highest of the elevations of the four intersections of the side lot lines and the appropriate two lines that are 40 feet apart and parallel to the building line.

(c) For the last portion, the 15-foot height of the horizontal line is measured at the highest of the elevations of the four intersections of the side lot lines, the appropriate line parallel to the building line, and the rear lot line.

(3) This paragraph applies to a one-story building that was originally constructed or received a building permit for the original construction before October 1, 2006, and that is remodeled to add a second story. An inwardly sloping 45 degree angle side setback plane begins at a horizontal line directly above the outermost side wall at a height that is equal to the height of the first floor wall plate plus ten feet.

(4) An inwardly sloping 45 degree angle rear setback plane begins at a horizontal line directly above the rear property line at the same elevation as the horizontal line for the last portion of the side setback plane established in Paragraph (2)(c).

(5) A structure may not extend beyond a setback plane, except for:

(a) a structure authorized by the Residential Design and Compatibility Commission in accordance with Subsection (M);

(b) a roof overhang or eave, up to two feet beyond the envelope;

(c) a chimney, vent, antenna, or energy conservation or production equipment or feature not designed for occupancy; and

(d) either:

- (i) a side gabled roof structure, with a total horizontal length of not more than 30 feet, measured from the front of the building along the intersection with the building envelope; or
 - (ii) gables or a shed roof, with a total horizontal length of not more than 18 feet on each side of the building, measured along the intersection with the building envelope; and dormers, with a total horizontal length of not more than 15 feet on each side of the building, measured along the intersection with the building envelope.
- (M) This subsection provides for modification by the Residential Design and Compatibility Commission of certain requirements of this section for a proposed development.
 - (1) The Residential Design and Compatibility Commission may approve:
 - (a) an increase of up to 25 percent in the:
 - (i) maximum floor-to-area ratio or maximum square footage of gross floor area;
 - (ii) maximum linear feet of gables or dormers protruding from the setback plane;
 - (iii) maximum side wall length before articulation is required; or
 - (iv) maximum height of the side or rear setback plane; or
 - (b) a decrease of up to 25 percent in the minimum depth or length of a required wall articulation.
 - (2) A person may request a modification by filing an application with the director on a form provided by the director.
 - (3) Not later than the 14th day after an application is filed, the director shall:
 - (a) mail notice of the application to:
 - (i) each notice owner of property immediately adjacent to the subject property;
 - (ii) the appropriate neighborhood association, if any; and
 - (iii) the neighborhood plan team, if any; and

(b) post notice of the application in accordance with Section 25-1-135 (*Posting Of Signs*).

(4) The Residential Design and Compatibility Commission may approve a modification if it determines that the proposed development is compatible in scale and bulk with the structures in the vicinity of the development. In making this determination, the commission shall consider:

(a) the recommendation of the neighborhood plan team, if any;

(b) the development's:

(i) compliance with neighborhood design guidelines, if any;

(ii) consistency with the streetscape of the properties in the vicinity;

(iii) consistency with the massing, scale, and proximity of structures located on either side of or behind the development;

(iv) impact on privacy of adjacent rear yards; and

(v) topography and lot shape; and

(c) for a development of an entire block, whether the development will have a negative impact on adjacent property.

(5) The Residential Design and Compatibility Commission may not approve a modification for:

(a) a local, state, or national historic landmark, if the modification would adversely impact the landmark's historic status;

(b) a "contributing structure", as defined in Section 25-2-351 (*Contributing Structure Defined*), if the modification would adversely impact its status as a contributing structure; or

(c) a property listed as Priority 1 or Priority 2 on the City's most current survey of historic assets, if the modification would adversely impact the property's architectural integrity or change its priority rating.

(6) An interested party may appeal the Residential Design and Compatibility Commission's decision to the council.

(7) This subsection does not prohibit the Board of Adjustment from granting a variance from a requirement of this section under 25-2-473 (*Variance Requirements*).

- (N) Section 25-2-1406 (*Ordinance Requirements*) provides for city council modification of certain requirements of this section.

PART 3. Section 25-2-773 (*Duplex Residential Use*) of the City Code is amended to add Subsection (D) to read:

(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 4. 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) or [~~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) This subsection applies to property other than that which is subject to Section 25-2-566 (*Special Regulations For Certain Residential Districts*).

(1) [(C)] A person may increase the height of a building that is a noncomplying structure based on a height requirement of this title if:

- (a) [(1)] the increase is made to a portion of the building that does not exceed the existing maximum height of the building;
- (b) [(2)] the increase does not exceed 15 percent of the existing maximum height of the building; and
- (c) [(3)] after modification, the height of the modified portion of the building does not exceed the existing maximum height of the building.

(2) ~~[(D)]~~ A person may modify a building that is a noncomplying structure based on a yard setback requirement of this title if:

(a) ~~[(1)]~~ the modified portion of the building does not extend further into the required yard setback than the existing noncomplying portion of the building; and

(b) ~~[(2)]~~ the additional length of a modified portion of the building does not exceed 25 feet measured from the existing building and parallel to the lot line.

(3) ~~[(E)]~~ Paragraph (2) ~~[Subsection (D)]~~ applies to each yard setback requirement with which the existing building does not comply.

(4) ~~[(F)]~~ A person may modify a noncomplying building once under Paragraph (1) ~~[Subsection (C)]~~ and once under Paragraph (2) ~~[Subsection (D) of this section]~~. This subsection ~~[section]~~ does not prohibit a person from modifying a building along more than one yard setback as part of a single project.

(D) This subsection applies to property that is subject to Section 25-2-566 (Special Regulations For Certain Residential Districts).

(1) A person may increase the height of a building that is a noncomplying structure based on a height requirement of this title if:

(a) the increase is made to a portion of the building that:

(i) does not exceed the existing maximum height of the building;
and

(ii) complies with the yard setback requirements of this title;

(b) the increase does not exceed 15 percent of the existing maximum height of the building; and

(c) after modification, the height of the modified portion of the building does not exceed the existing maximum height of the building.

(2) A person may modify a building that is a noncomplying structure based on a yard setback requirement of this title if:

(a) the modified portion of the building:

- (i) does not extend further into the required yard setback and is not greater in height than the existing noncomplying portion of the building; and
 - (ii) complies with the height requirements of this title; and
- (b) the additional length of a modified portion of the building does not exceed the lesser of 50 percent of the length of the noncomplying portion of the building or 25 feet, measured from the existing building and parallel to the lot line.
- (3) Paragraph (2) applies to each yard setback requirement with which the existing building does not comply.
- (4) A person may modify a noncomplying building once under Paragraph (1) and once under Paragraph (2). This subsection does not prohibit a person from modifying a building along more than one yard setback as part of a single project.

PART 5. Section 25-2-964 (*Restoration And Use Of Damaged Or Destroyed Noncomplying Structures*) of the City Code is amended to read:

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

- (A) This subsection applies to property other than that which is subject to Section 25-2-566 (*Special Regulations For Certain Residential Districts*). A person may restore a damaged or destroyed noncomplying structure if the restoration begins not later than 12 months after the date the damage or destruction occurs.
- (B) This subsection applies to property that is subject to Section 25-2-566 (*Special Regulations For Certain Residential Districts*).
 - (1) A person may restore a noncomplying structure that is damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind if the restoration begins not later than 12 months after the date the damage or destruction occurs.
 - (2) Except as provided in Section 25-2-963(D) (*Modification And Maintenance Of Noncomplying Structures*):
 - (a) a structure restored under this section is limited to the same building footprint, gross floor area, and interior volume as the damaged or destroyed structure; and

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

PART 6. Section 25-2-1406 (*Ordinance Requirements*) of the City Code is amended to read:

§ 25-2-1406 ORDINANCE REQUIREMENTS.

An ordinance zoning or rezoning property as a NP combining district:

- (1) must prescribe the special uses described in Section 25-2-1403 (Special Uses) that are permitted in the district;
- (2) must describe the location of each residential infill special use, neighborhood urban center special use, or neighborhood mixed use building special use, if any;
- (3) may restrict the time of day during which a business in a neighborhood mixed use building special use may be open to the public;
- (4) may restrict a corner store special use, cottage special use, secondary apartment special use, or urban home special use, if any, to a designated portion of the district;
- (5) for a single-family residential use or a secondary apartment special use on an existing legal lot:
 - (a) may reduce the required minimum lot area to 2,500 square feet;
 - (b) may reduce the required minimum lot width to 25 feet; and
 - (c) for a lot with an area of 4,000 square feet or less, may increase the maximum impervious coverage to 65 percent;
- (6) may apply the requirements of Section 25-2-1602 (*Front Porch Setback*), Section 25-2-1603 (*Impervious Cover and Parking Placement Requirements*), or Section 25-2-1604 (*Garage Placement*) to the district or a designated portion of the district; [and]
- (7) may restrict front yard parking by including all or a portion of the district in the restricted parking area map described in Section 12-5-29 (*Front or Side Yard Parking*); and
- (8) may modify the following requirements of Section 25-2-566 (*Special Regulations For Certain Residential Districts*):

- (a) the maximum floor-to-area ratio and maximum square footage of gross floor area prescribed by Section 25-2-566(K) (*Special Regulations For Certain Residential Districts*);
- (b) the maximum linear feet of gables or dormers protruding from the setback plane;
- (d) the height of the side and rear setback planes; and
- (e) the minimum front yard setback requirement.

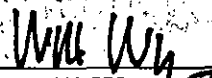
PART 7. The Residential Design and Compatibility Commission members shall conduct an organizational meeting as soon as practicable after their appointment. At the first meeting of the commission, the members shall draw lots to determine whose terms shall expire on October 1 of even-numbered years and whose terms shall expire on October 1 of odd-numbered years.

PART 8. Ordinance No. 20060309-058 is repealed, except that Part 6 (*Waiver*) is continued in effect and applies to a waiver application filed before October 1, 2006.


PART 9. This ordinance takes effect on October 1, 2006.

PASSED AND APPROVED

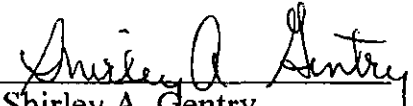
June 22, 2006

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Will Wynn
Mayor

APPROVED:


David Allan Smith
City Attorney

ATTEST:


Shirley A. Gentry
City Clerk