

STAFF RECOMMENDATIONS

Item #94
5/19/22
CPO

ORDINANCE NO.

**AN ORDINANCE AMENDING CITY CODE TITLE 25 RELATING TO
REGULATION OF PUBLIC MOBILITY PROJECTS IN THE RIGHT-OF-WAY;
AND ESTABLISHING AN OPTIONAL PAYMENT RELATED TO WATER
QUALITY CONTROLS FOR PUBLIC MOBILITY PROJECTS IN THE RIGHT-
OF-WAY.**

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

PART 1. City Code Section 25-1-21 (*Definitions*) is amended to add a new definition for “public mobility project” and to renumber the subsequent definitions accordingly:

(88) PUBLIC MOBILITY PROJECT means a transportation project, including a multi-use trail, rail or transit line, or street, funded by a public entity and located on publicly owned land or in the right-of-way or a public easement.

PART 2. City Code Section 25-1-112 (*Fiscal Security*) is amended to add a new Subsection (F) to read as follows:

(F) A public mobility project in the right-of-way is not required to post fiscal security under this title.

PART 3. Section 1.2.4. (*Exemptions*) of City Code Chapter 25-2, Subchapter E is amended to read as follows:

1.2.4. Exemptions.

A. General Exemptions. Except as otherwise provided in this Subchapter, the following types of development are exempt from the requirements of this Subchapter:

1. Development that does not require a site plan under Chapter 25-5, except that Section 2.5 (*Exterior Lighting*) shall apply;
2. Development in the following zoning districts:
 - a. Agricultural (AG) district;
 - b. Aviation (AV) district; and
 - c. Traditional neighborhood (TN) district;

3. Development built pursuant to the overlay district provisions of the University Neighborhood Overlay (UNO) district;
4. Development of a public primary or secondary educational facility;
5. Development built pursuant to the Robert Mueller Municipal Airport Redevelopment Plan;
6. Development of an industrial use or unmanned communication services, construction sales and service, drop-off recycling collection facility, equipment repair or scrap and salvage services use that is not located on a Core Transit Corridor;
7. Interior remodeling of a building.
8. Development for which public access is prohibited due to health, safety and welfare reasons;
9. Development of a warehouse if less than 25% of the gross floor area is used for a non-industrial use;
10. Sidewalk, shared use and urban trail projects managed by the City of Austin and processed under the City's General Permit program which are undertaken for the purpose of bringing existing facilities into compliance with the Americans With Disabilities Act;
11. A public mobility project in the right-of-way; and
12. Development built pursuant to any of the following adopted regulating plans:
 - a. Transit-Oriented District Station Area Plan;
 - b. North Burnet/Gateway (NBG) District;
 - c. East Riverside Corridor;
 - d. Waller Creek District;
 - e. Downtown Austin Plan; or

f. Airport Boulevard Corridor Plan.

PART 4. Subsections (B) and (D) of City Code Section 25-8-42 (*Administrative Variances*) are amended to read as follows:

(B) The director of the Watershed Protection Department may grant a variance from a requirement of:

(1) Section 25-8-261 (*Critical Water Quality Zone Development*), only if:

- (a) necessary to protect public health and safety, or if it would provide a significant, demonstrable environmental benefit, as determined by a functional assessment of floodplain health as prescribed by the Environmental Criteria Manual,
- (b) necessary to allow an athletic field in existence on October 28, 2013, to be maintained, improved, or replaced,
- (c) necessary to allow an athletic field to be located in an area not otherwise allowed under Section 25-8-261(B)(5), or
- (d) necessary to allow a hard surfaced trail to be located in an area not otherwise allowed under Section 25-8-261(B)(3);

(2) Section 25-8-261 (*Critical Water Quality Zone Development*), for development within an urban watershed, only if the proposed development:

- (a) is located not less than 25 feet from the centerline of a waterway,
- (b) is located outside the erosion hazard zone, unless protective works are provided as prescribed in the Drainage Criteria Manual,
- (c) does not increase non-compliance, if any, with Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), Section 25-8-281 (*Critical Environmental Features*) or Section 25-8-282 (*Wetland Protection*), and

(d) restores native vegetation and soils if development is removed from the Critical Water Quality Zone;

(3) Subsection 25-8-262(B) (*Critical Water Quality Zone Street Crossings*), only outside the Barton Springs Zone;

(4) Section 25-8-281 (*Critical Environmental Features*);

(5) Section 25-8-322 (*Clearing for a Roadway*);

(6) Section 25-8-341 (*Cut Requirements*) or Section 25-8-342 (*Fill Requirements*), for a cut or fill of not more than eight feet in the desired development zone and, for a public primary or secondary educational facility, within the desired development zone or the drinking water protection zone;

(7) Subsection 25-8-343(A) (*Spoil Disposal*);

(8) Section 25-8-365 (*Interbasin Diversion*);

(9) Subsection 25-8-392(B)(6) (*Uplands Zone*), Subsection 25-8-392(C)(6) (*Uplands Zone*), Subsection 25-8-423(D) (*Uplands Zone*), or Subsection 25-8-453(E) (*Uplands Zone*).

(D) The director of the Watershed Protection Department may grant a variance described in Subsection (B) only after determining that development in accordance with the variance meets the objective of the requirement for which the variance is requested and:

(1) for property in the Barton Springs Zone, the variance will result in water quality that is at least equal to the water quality achievable without the variance;

(2) for a variance from Section 25-8-261(B)(5), that the proposed work on or placement of the athletic field will have no adverse environmental impacts;

(3) for a variance from Section 25-8-281, that the proposed measures preserve all characteristics of the critical environmental feature;

- 112 (4) for a variance from Section 25-8-341 or Section 25-8-342 the cut or
113 fill is not located on a slope with a gradient of more than 15 percent or
114 within 100 feet of a classified waterway;
- 115 (5) for a variance from Section 25-8-343(A), use of the spoil provides a
116 necessary public benefit. Necessary public benefits include:
- 117 (a) roadways;
- 118 (b) stormwater detention facilities;
- 119 (c) public or private park sites; and
- 120 (d) building sites that comply with Section 25-8-341 (*Cut*
121 *Requirements*), Section 25-8-342 (*Fill Requirements*), and
122 Chapter 25-7 (*Drainage*); and
- 123 (6) for a variance from Section 25-8-365, there are no adverse
124 environmental or drainage impacts;
- 125 (7) for a variance from Subsection 25-8-392(B)(6), Subsection 25-8-
126 392(C)(6), Subsection 25-8-423(D), or Subsection 25-8-453(E), the
127 variance:
- 128 (a) is the minimum deviation needed to provide necessary
129 improvements for a public mobility project in the right-of-way;
130 and
- 131 (b) does not create significant adverse environmental impacts.

132 **PART 5.** City Code Section 25-8-211 (*Water Quality Control Requirement*) is amended
133 to add a new Subsection (F) to read as follows:

- 134 (F) For a public mobility project in the right-of-way, the calculation of
135 impervious cover for compliance with Subsection (B)(3) or Subsection (E)
136 in any watershed shall:
- 137 (1) be determined on a watershed basis for development applications that
138 span multiple watersheds; and

(2) deduct existing impervious cover that is removed by the same project if the area with removed impervious cover is:

(i) decompacted and revegetated as prescribed in the Environmental Criteria Manual and the Standard Specifications Manual; and

(ii) located within the same watershed.

PART 6. City Code Section 25-8-214 (*Optional Payment Instead of Structural Controls in Urban Watersheds*) is amended to amend the Section heading, to add new Subsections (E) through (G), and to read as follows:

**§ 25-8-214 OPTIONAL PAYMENT INSTEAD OF STRUCTURAL CONTROLS
[~~IN URBAN WATERSHEDS~~].**

- (A) The director of the Watershed Protection Department shall identify and prioritize water quality control facilities for the urban watersheds in an Urban Watersheds Structural Control Plan. The Environmental Board shall review the plan in January of each year.
- (B) An Urban Watersheds Structural Control Fund is established for use in the design and construction of water quality control facilities in the urban watershed.
- (C) Instead of providing the water quality controls required under Section 25-8-211 (*Water Quality Control Requirement*), in an urban watershed an applicant ~~[a developer]~~ may request approval to deposit with the City a nonrefundable cash payment, based on a formula established by the council. The director shall review the request and accept or deny the request based on the standards in the Environmental Criteria Manual.
- (D) The director shall deposit a payment made under Subsection (C) ~~[this section]~~ in the Urban Watersheds Structural Control Fund.
- (E) A Suburban and Water Supply Watersheds Structural Control Fund is established for use in the design and construction of water quality control facilities.

(F) For a public mobility project in the right-of-way that is located in a suburban, water supply suburban, or water supply rural watershed, an applicant may request approval to deposit a nonrefundable cash payment, based on a formula established by the council, with the City instead of providing the water quality controls required under Section 25-8-211 (*Water Quality Control Requirement*). The director shall review the request and accept or deny the request based on the standards in the Environmental Criteria Manual.

(G) The director shall deposit a payment made under Subsection (F) in the Suburban and Water Supply Watersheds Structural Control Fund.

PART 7. City Code Section 25-8-262 (*Critical Water Quality Zone Street Crossings*) is amended to amend the Section heading and to amend Subsections (A) and (B) to read as follows:

§ 25-8-262 CRITICAL WATER QUALITY ZONE MOBILITY [STREET] CROSSINGS

(A) In an urban watershed, an arterial street, collector street, [~~or~~] residential street, or rail line may cross a critical water quality zone of any waterway.

(B) This subsection applies in a watershed other than an urban watershed.

(1) A major waterway critical water quality zone may be crossed by an arterial street or rail line identified in the Transportation Plan.

(2) An intermediate waterway critical water quality zone may be crossed by an arterial street, [~~or~~] collector street, or rail line, except:

(a) a collector street crossing must be at least 2,500 feet from a collector or arterial street crossing on the same waterway; or

(b) in a water supply suburban or water supply rural watershed, or the Barton Springs Zone, a collector street crossing must be at least one mile from a collector or arterial street crossing on the same waterway.

(3) A minor waterway critical water quality zone may be crossed by an arterial street, [~~or~~] collector street, or rail line, except:

- (a) a collector street crossing must be at least 900 feet from a collector or arterial street crossing on the same waterway; or
 - (b) in a water supply suburban or water supply rural watershed, or the Barton Springs Zone, a collector street crossing must be at least 2,000 feet from a collector or arterial street crossing on the same waterway.
- (4) A minor waterway critical water quality zone may be crossed by a residential or commercial street if necessary to provide access to property that cannot otherwise be safely accessed.

PART 8. City Code Section 25-8-341 (*Cut Requirements*) is amended to read as follows:

§ 25-8-341 CUT REQUIREMENTS.

- (A) Cuts on a tract of land may not exceed four feet of depth, except:
- (1) in an urban watershed;
 - (2) in a roadway right-of-way or rail line right-of-way;
 - (3) for construction of a building foundation or swimming pool;
 - (4) for construction of a water quality control or detention facility and appurtenances for conveyance such as swales, drainage ditches, and diversion berms, if:
 - (a) the design and location of the facility within the site minimize the amount of cut over four feet;
 - (b) the cut is the minimum necessary for the appropriate functioning of the facility; and
 - (c) the cut is not located on a slope with a gradient of more than 15 percent or within 100 feet of a classified waterway;
 - (5) for utility construction or a wastewater drain field, if the area is restored to natural grade;
 - (6) in a state-permitted sanitary landfill or a sand or gravel excavation located in the extraterritorial jurisdiction, if:

- (a) the cut is not in a critical water quality zone;
 - (b) the cut does not alter a 100-year floodplain;
 - (c) the landfill or excavation has an erosion and restoration plan approved by the City; and
 - (d) all other applicable City Code provisions are met.
- (7) for any cut associated with construction of a multi-use trail, if:
- (a) the cut is not located on a slope with a gradient of more than 15 percent or within 100 feet of a classified waterway;
 - (b) the cut is limited to no more than eight feet in depth;
 - (c) the cut is located in a public right-of-way or public easement; and
 - (d) the trail is designed in accordance with the Environmental Criteria Manual.

PART 9. Subsection (A) of City Code Section 25-8-342 (*Fill Requirements*) is amended to read as follows:

- (A) Fill on a tract of land may not exceed four feet of depth, except:
- (1) in an urban watershed;
 - (2) in a roadway right-of-way or rail line right-of-way;
 - (3) under a foundation with sides perpendicular to the ground, or with pier and beam construction;
 - (4) for construction of a water quality control or detention facility and appurtenances for conveyance such as swales, drainage ditches, and diversion berms, if:
 - (a) the design and location of the facility within the site minimize the amount of fill over four feet;

- (b) the fill is the minimum necessary for the appropriate functioning of the facility; and
- (c) the fill is not located on a slope with a gradient of more than 15 percent or within 100 feet of a classified waterway;
- (5) for utility construction or a wastewater drain field;
- (6) in a state-permitted sanitary landfill located in the extraterritorial jurisdiction, if:
 - (a) the fill is derived from the landfill operation;
 - (b) the fill is not placed in a critical water quality zone or a 100-year floodplain;
 - (c) the landfill operation has an erosion and restoration plan approved by the City; and
 - (d) all other applicable City Code provisions are met; or
- (7) for fill associated with construction of a multi-use trail, if:
 - (a) the fill is not located on a slope with a gradient of more than 15 percent or within 100 feet of a classified waterway;
 - (b) the fill is limited to no more than eight feet in depth;
 - (c) the fill is located in a public right-of-way or public easement; and
 - (d) the trail is designed in accordance with the Environmental Criteria Manual.

PART 10. City Code Section 25-8-372 (*Uplands Zone*) in Article 8 (*Urban Watershed Requirements*) is amended to add a new Subsection (D) to read as follows:

- (D) Maximum impervious cover for a public mobility project in the right-of-way is 100 percent.

PART 11. City Code Section 25-8-392 (*Uplands Zone*) in Article 9 (*Suburban Watershed Requirements*) is amended to read as follows:

§ 25-8-392 UPLANDS ZONE.

- (A) This section applies to development in an uplands zone. Impervious cover limits in this section are expressed as percentages of gross site area.
- (B) This subsection applies in the extraterritorial jurisdiction and in the portions of the Lake, Rattan, Buttercup, South Brushy, and Brushy Creek watersheds that are in the zoning jurisdiction.
 - (1) Impervious cover for a single-family residential use with a minimum lot size of 5,750 square feet may not exceed:
 - (a) 45 percent; or
 - (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 50 percent.
 - (2) Impervious cover for a duplex or single-family residential use with a lot smaller than 5,750 square feet in size may not exceed:
 - (a) 55 percent; or
 - (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 60 percent.
 - (3) Impervious cover for a multifamily residential use may not exceed:
 - (a) 60 percent; or
 - (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 65 percent.
 - (4) Impervious cover for a commercial use may not exceed:
 - (a) 65 percent; or
 - (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 70 percent.

(5) Impervious cover for mixed use may not exceed:

- (a) the limits in subsection (B)(3) for the portion of the ground floor that is multifamily residential;
- (b) the limits in subsection (B)(4) for the portion of the ground floor that is commercial; and
- (c) impervious cover for the entire site shall be based on the ratios determined on the ground floor.

(6) Impervious cover for a public mobility project in the right-of-way may not exceed 90 percent.

(C) This subsection applies in the portion of the zoning jurisdiction that is outside the Lake, Rattan, Buttercup, South Brushy, and Brushy Creek watersheds.

(1) Impervious cover for a single-family residential use with a minimum lot size of 5,750 square feet may not exceed:

- (a) 50 percent; or
- (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 60 percent.

(2) Impervious cover for a duplex or single-family residential use with a lot smaller than 5,750 square feet in size may not exceed:

- (a) 55 percent; or
- (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 60 percent.

(3) Impervious cover for a multifamily residential use may not exceed:

- (a) 60 percent; or
- (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 70 percent.

- (4) Impervious cover for a commercial use may not exceed:
- (a) 80 percent; or
 - (b) if development intensity is transferred under Section 25-8-393 (*Transfer of Development Intensity*), 90 percent.
- (5) Impervious cover for mixed use may not exceed:
- (a) the limits in subsection (C)(3) for the portion of the ground floor that is multifamily residential:
 - (b) the limits in subsection (C)(4) for the portion of the ground floor that is commercial; and
 - (c) impervious cover for the entire site shall be based on the ratios determined on the ground floor.
- (6) Impervious cover for a public mobility project in the right-of-way may not exceed 90 percent.

PART 12. Subsection (B) of City Code Section 25-8-422 (*Water Quality Transition Zone*) in Article 10 (*Water Supply Suburban Watershed Requirements*) is amended to read as follows:

- (B) In a water quality transition zone that does not lie over the South Edwards Aquifer recharge zone, the impervious cover of the land area of a site may not exceed 18 percent. This limit on impervious cover does not apply to a public mobility project in the right-of-way allowed to cross a critical water quality zone under Section 25-8-262 (*Critical Water Quality Zone Street Crossings*). In determining land area, land in the 100 year floodplain is excluded.

PART 13. City Code Section 25-8-423 (*Uplands Zone*) in Article 10 (*Water Supply Suburban Watershed Requirements*) is amended to add a new Subsection (D) to read as follows:

- (D) Impervious cover for a public mobility project in the right-of-way may not exceed 65 percent.

PART 14. Subsection (B) of City Code Section 25-8-452 (*Water Quality Transition Zone*) in Article 11 (*Water Supply Rural Watershed Requirements*) is amended to read as follows:

- (B) Development is prohibited in a water quality transition zone that lies outside the South Edwards Aquifer recharge zone, except for:
- (1) development described in Article 7, Division 1 (*Critical Water Quality Zone Restrictions*);
 - (2) streets or public mobility projects in the right-of-way;
 - (3) minor drainage facilities or water quality controls that comply with Section 25-8-364 (*Floodplain Modification*) and the floodplain modification guidelines of the Environmental Criteria Manual; and
 - (4) duplex or single-family residential development with a minimum lot size of two acres and a density of not more than one unit for each three acres, excluding acreage in the 100 year flood plain.

PART 15. City Code Section 25-8-453 (*Uplands Zone*) in Article 11 (*Water Supply Rural Watershed Requirements*) is amended to add a new Subsection (E) to read as follows:

- (E) Impervious cover for a public mobility project in the right-of-way may not exceed 55 percent.

PART 16. Until a separate formula is established as set out under Subsection (F) of City Code Section 25-8-214 (*Optional Payment Instead of Structural Controls*), a payment into the Suburban and Water Supply Watersheds Structural Control Fund shall be calculated using the same formula already established by council for a payment into the Urban Watersheds Structural Control Fund under Subsection (C) of City Code Section 25-8-214.

PASSED AND APPROVED

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_____, 2022

Steve Adler

Mayor

APPROVED: _____ **ATTEST:** _____
Anne L. Morgan Myrna Rios
City Attorney City Clerk

DRAFT