

ORDINANCE NO. 090421

AN ORDINANCE ESTABLISHING A PROCEDURE FOR MAKING IMPERVIOUS COVER DETERMINATIONS OF SINGLE FAMILY RESIDENTIAL LOTS AND MAINTAINING RECORDS OF SUCH DETERMINATIONS; PROVIDING FOR THE PROMULGATION OF REGULATIONS FOR CALCULATING THE AMOUNT AND PERCENTAGE OF IMPERVIOUS COVER LOCATED ON SUCH LOTS; PROVIDING FOR RELIANCE ON SUCH A DETERMINATIONS IN CONNECTION WITH FUTURE DEVELOPMENT APPLICATIONS; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERANCE

WHEREAS, the City of Sunset Valley has enacted watershed protection regulations that protect water quality and the quality of life within the City by limiting the allowed amount of impervious cover on lots, including single family residential lots;

WHEREAS, the owners of such residential property claim to have been given, from time to time, conflicting information from agents of the City regarding the amount of impervious cover allocated to and used on their properties;

WHEREAS, the owners of such residential properties have, from time to time contested the amount of impervious cover located on their property as reflected in records of development maintained by the City;

WHEREAS, many older residential lots in the City were improved prior to adoption of the City's watershed protection regulations, but are comprised of land in protected water quality zones, thereby substantially restricting the amount of allowed development and making an accurate calculation of impervious cover important; and

WHEREAS, it is in the City's interest to accurately determine the amounts of impervious cover on such residential lots in order to accurately apply its watershed protection regulations, and to provide for a reasonably certain and convenient manner for owners of residential property to determine any additional development rights or opportunities available to them.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNSET VALLEY:

Section 1. Purpose. It is the intention of this Ordinance to provide a convenient and accurate means for determining the amount of impervious cover on a lot zoned and used for single family residential purposes and to allow homeowners to determine, using

accurate approved methodologies, the amount of impervious cover on their lot for the purpose of constructing improvements. It is intended that information included in determinations of impervious cover made pursuant to the provisions of this Ordinance be used by the City for the purpose of evaluating potential water quality and drainage facilities or improvements to be constructed by the City, for determining the scope and potential for flooding in the City in various storm events, and for planning future growth, development, and transportation and utility infrastructure based on drainage effects inferable from impervious cover determinations made pursuant to this Ordinance.

Section 2. Definitions

(a) "Director" shall mean the Assistant City Administrator or his/her designee, who shall serve as the person responsible for compiling, monitoring, and updating the Impervious Cover Inventory Record.

(b) "Impervious Cover Inventory Record" shall mean a record maintained by the City of the amount of impervious cover on each Lot in accordance with this Ordinance.

(c) "Lot" shall mean a platted lot or a legal tract of land located in the City of Sunset Valley or its extraterritorial jurisdiction that was either subdivided prior to the adoption by the City of subdivision regulations, or was subdivided in a manner and at a time when such subdivision was not required by applicable law to be platted, and that is zoned for (if the Lot is subject to the City's zoning regulations) and used or to be used for single family residential purposes.

(d) "Impervious Cover Determination Request" or "IC Request" shall mean: (i) a written request submitted by the owner of a Lot to the Director for a determination of impervious cover on the Lot; or (ii) submission of an application for development on a Lot which, pursuant to the requirements of applicable provisions of the City's Land Development Code or other ordinances, requires a determination of impervious cover located on the Lot. A request in writing may be provided by email and is sufficient if it identifies (i) the owner of the Lot, (ii) the address of the Lot and (iii) that a request for a determination of the amount of impervious on the Lot is made.

Section 3. Director Determination of Impervious Cover in Response to IC Request .

(a) Not later than five (5) business days after receipt of an IC Request, the Director shall forward notice to the owner of the affected Lot indicating that an IC Request has been received and proposing a schedule for completing an analysis of impervious cover on the Lot. The notice shall include a statement requesting the owner of the Lot to provide any survey or other document that discloses the location or dimensions of any improvements presently located on the Lot.

(b) In response to the notice, the owner shall provide the Director with any information in his or her possession, including any survey or other document that discloses the location or dimensions of any improvements located on the Lot. If the

owner has no such information, the owner shall so inform the Director.

(c) Within five (5) business days of receipt of the information from owner in (b), the Director shall determine whether a physical inspection of the Lot is needed to determine accurately the amount of impervious cover on the Lot, or to verify the accuracy of the information available concerning the amount of impervious cover on the Lot. If the Director determines that an inspection is needed, the Director shall notify the owner that an inspection is needed and shall cooperate with the owner to arrange a mutually acceptable date for the inspection. If the Director determines that an inspection is not needed, the Director shall notify the owner that the amount of impervious cover can be determined accurately without an inspection.

(d) The Director shall determine the amount of impervious cover on the Lot within ten (10) business days following the date the Lot is inspected or if there is no inspection, the date the Director notifies the owner that no inspection is needed.

(e) The Director's determination of impervious cover shall determine: (i) the total area of the Lot, calculated in square feet and acres; (ii) the type of improvements comprising impervious cover on the Lot; (iii) the location and area measured in square feet, of each improvement constituting impervious cover on the Lot; (iv) the location, size and area measured in square feet of any improvements that would be considered impervious cover but for an exemption provided in section 4.103(g) and 4.103(h) of the Land Development Code; (v) any special restrictions, additions or reductions on impervious cover allowed on the Lot as a result of a restrictive covenant enforceable by the City or a term or condition of a prior permit or development approval affecting such Lot; and (vi) the percentage of the Lot on which impervious cover is located.

Section 4. Exceptions to Director's Obligation to Determine Amount of Impervious Cover in Response to IC Request.

(a) Notwithstanding the provisions of Section 3, the Director shall not be obligated to make a determination of impervious cover pursuant to this Ordinance if:

- (i) the Director determines that an inspection is needed under Section 3 and the owner fails or refuses to cooperate in providing access to the Lot for inspection;
- (ii) the Director determines that the owner has failed or refused to provide information in his or her possession that is reasonably necessary for making a determination, and as a result of that failure or refusal a calculation of impervious cover with reasonable accuracy cannot be made by the Director;
- (iii) the owner has submitted an IC Request with respect to three (3) or more Lots during the six month period ending on the date of the submission; or
- (iv) the owner has submitted an IC Request with respect to the same Lot within the past year and fails to provide sufficient

information to the Director to indicate that the impervious cover on the Lot, or the Lot size, has substantially changed from the information in the Impervious Cover Inventory Record.

(b) The Director may deny an application for development on a Lot constituting the IC Request if the Director fails to make a determination of impervious cover on any of the bases set forth in this Section 4.

Section 5. Director's Discretionary Determination of Impervious Cover

(a) Whether or not an IC Request is received, the Director shall have the discretion to determine the amount of impervious cover on any Lot (i) for which an application or request for permit to develop the Lot is received; (ii) for which an application or request for permit to effect a new subdivision or re-subdivision of the Lot is received; (iii) in connection with an application or request for approval for any change in impervious cover on the Lot; or (iv) as directed by the City Administrator under or (v) for the purpose of obtaining a more complete record of impervious cover in the City and its extraterritorial jurisdiction, if the owner agrees to cooperate in providing relevant information and/or inspection for such purpose.

(b) The Director shall have the discretion to determine the amount of impervious cover on any Lot under section 5(a) upon finding that (i) there is no information on the Lot in the Impervious Cover Inventory Record; (ii) the information on the Lot in the Impervious Cover Inventory Record is inaccurate or incorrect; or (iii) if the Director is unable to ascertain whether the information in the Impervious Cover Inventory Record is accurate and circumstances exist that reasonably indicate that the amount of impervious cover on the Lot may be different than the information on the Lot contained in the Impervious Cover Inventory Record.

(c) The Director's discretionary determination of the amount of impervious cover under this Section shall follow the process for determining the amount of impervious cover in response to an IC Request as described in section 3 of this ordinance. In the event that the Director determines that the owner has failed or refused to provide information in his or her possession that is reasonable necessary for making an impervious cover determination, or has failed or refused to provide access to the Lot for a physical inspection, the Director may determine the amount of impervious cover in his or her discretion based on whatever information is reasonably available to the Director.

(d) Notwithstanding the foregoing, the Director may not exercise the discretion to determine the amount of impervious cover on a Lot in response to the submission of an impervious cover determination by an owner under section 6 except as provided in that section.

Section 6. Impervious Cover Determination by Owner.

(a) The owner of a Lot may submit impervious cover information to be included as the City's Impervious Cover Inventory Record as to the owned Lot at any time, whether or not the Director has made a determination as to the amount of impervious cover on that Lot, by submitting a written document including an impervious cover determination for the Lot in accordance with the methodologies and regulations approved by the City for determining impervious cover on the Lot.

(b) Any impervious cover determination submitted by an owner under this section shall include the same information that would be included in a determination by the Director in response to an IC Request as described in section 3(e).

(c) Within 10 business days of the submission, the Director shall review the submission to assess: (i) whether it has been undertaken in accordance with the methodologies and regulations approved by the City; (ii) whether it accurately identifies and calculates the amount of impervious cover on the Lot; (iii) whether it accurately identifies and calculates the size of the Lot; and (iv) whether the information submitted includes all the information required by Section 3(e). If upon review the submission complies with (i)-(iv), the Director shall promptly notify the owner of the Lot that the submission complies with (i)-(iv), that the impervious cover determination is accepted by the City, and shall accordingly update the Impervious Cover Inventory Record for the Lot. If the Director concludes that the submission does not comply with one or more of (i)-(iv) above, the Director shall notify the owner of the Lot that the submission does not comply and state in detail the reason(s) why the submission does not so comply.

(d) In the event that the owner fails to receive a written explanation identifying why the submission is insufficient within the 10 business days, the Impervious Cover Inventory Record shall be updated with the information supplied by the owner, unless the City Administrator determines before the Record is updated that the submission is in error in some respect that impacts the accuracy of the percentage of impervious cover reported in the submission. In the event that the City Administrator determines that the submission is in error in some such respect, the City Administrator may instruct the Director to re-determine the amount of impervious cover on the property in accordance with the procedures set forth in Section 3 of this Ordinance.

Section 7. Impervious Cover Inventory Record.

(a) The Director shall maintain a record of the amount of impervious cover determined to be on a Lot as provided in this Ordinance in the Impervious Cover Inventory Record.

(b) The Director shall enter the impervious cover information determined pursuant to Section 3, 5, or 6, as applicable in the Impervious Cover Inventory

Record.

- (c) The information in the Impervious Cover Inventory Record shall include
 - (i) the date the amount of impervious cover was determined,
 - (ii) the total area of the Lot, calculated in square feet and acres;
 - (iii) the type of improvements comprising impervious cover on the Lot;
 - (iv) the location and area measured in square feet, of each improvement constituting impervious cover on the Lot;
 - (v) the location, size and area measured in square feet of any improvements that would be considered impervious cover but for an exemption provided in section 4.103(g) or 4.103(h) of the Land Development Code;
 - (vi) any special restrictions, additions or reductions on impervious cover allowed on the Lot as a result of a restrictive covenant enforceable by the City or a term or condition of a prior permit or development approval affecting such Lot; and
 - (vii) the percentage of the Lot on which impervious cover is located.
- (d) The information in the Impervious Cover Inventory Record is a public document subject to an Open Records request.

Section 8. Use and Reliance on Impervious Cover Inventory Record Information.

(a) The City shall use the information related to impervious cover on a Lot maintained in the Impervious Cover Inventory Record in any review, determination or assessment of any application for a permit or approval required for development on the Lot; provided, however, that the Director may exercise his or her discretion to determine the amount of impervious cover on the Lot in accordance with Section 5.

(b) An owner may rely on the information in the Impervious Cover Inventory Record maintained by the City for the purpose of a future application for a permit for development of the owner's Lot, including an application for any applicable administrative approval, provided that there has been no change in the amount of impervious cover on such Lot and no change in the size of such Lot since the date of the information in the Impervious Cover Inventory Record.

(c) Notwithstanding the provisions of this Section, the City may require proof that there has been no change in the amount of impervious cover on the Lot or in the size of the Lot since the last date of entry of information for the Lot in the Impervious Cover Inventory Record. If such proof is requested and is not provided, or is inadequate to reasonably permit a conclusion that the percentage of impervious cover on the Lot has not changed, the Director may undertake a determination of the amount of impervious cover on the Lot subject to the procedures set forth in Section 3.

(d) In the event that the Director concludes that a determination of the amount of

impervious cover on the Lot is needed under Section 8 (c), and the owner fails or refuses to cooperate in the Director's attempts to determine the amount of impervious cover, including refusing to provide access to the Lot for a physical inspection, the Director may reasonably determine the amount of impervious cover in his or her discretion based on whatever information is reasonably available to the Director. If the Director is unable to reasonably determine the amount of impervious cover without the cooperation of the owner, including cooperation in providing access to the Lot for an inspection, the Director may deny any application for a permit or approval required for development on the Lot based on the lack of proof that there is sufficient impervious cover allowance on the property to approve the application for permit or the development.

Section 9. Correction/Update of Impervious Cover Inventory Record.

(a) If the owner of a Lot disputes the information contained in the Impervious Cover Inventory Record for the Lot at any time, the owner may seek to update that information by submitting a determination of impervious cover in accordance with the provisions of Section 6.

(b) If the owner of a Lot disputes an impervious cover determination made by the Director under Section 3, Section 5, or as a result of a determination based on the direction of the City Administrator under Section 6 or subsection 8(c), the owner may appeal that determination within thirty (30) days of the determination. Any such appeal shall be submitted to the City Administrator, shall state in writing one or more specific reasons why the Director's determination is incorrect and shall also state the amount of impervious cover on the Lot based on the Director's determination and the amount of impervious cover the owner believes is on the Lot.

(c) Within ten (10) business days of receipt of an appeal, the City Administrator shall consider the submission and determine whether the Director's determination of the amount of impervious cover should be corrected. In the event that the City Administrator concludes that the amount of impervious cover should be corrected, he or she shall direct that the Impervious Cover Inventory Record be updated to reflect the corrected information. In the event that the City Administrator concludes that the Director's determination is more accurate than any information or submission by the owner, the City Administrator shall notify the owner of the Lot in writing of that determination, and shall include in that writing a concise statement of the reasons why the City Administrator believes that the Director's determination is a more accurate determination of the amount of impervious cover than any information submitted by the owner of the Lot.

(d) Within thirty (30) days of receipt of a determination by the City Administrator under Section 9(c) that the Director's determination is a more accurate determination of the amount of impervious cover, the owner of a Lot may appeal such determination to the City Council. Any such appeal, if timely filed, shall be placed on the agenda of the next regular meeting of the City Council. The City Council shall exercise plenary review authority and shall review any determination made by the Director and/or the City Administrator without deference to the previous determination to determine the most accurate determination of the amount of impervious cover on the Lot.

Section 10 Adoption of Authorized Methods for Determining Impervious Cover

From time to time, the Director may prescribe by regulation approved methodologies and regulations for determining total impervious cover and percentage of impervious cover on a Lot, consistent with applicable provisions of the Land Development Code. Any such means shall be published on the City's web site and presented to the City Council in an open meeting prior to the date such regulation shall be effective.

Section 11. This Ordinance shall be effective immediately upon adoption.

Section 12. This Ordinance shall be codified as an appendix to Chapter 4 of the City's Land Development Code. Any regulation(s) promulgated pursuant to this Ordinance prescribing methodologies and regulations for determining impervious cover on a Lot may further be appended to Chapter 4 of the Land Development Code.

Section 13. If any provision of this Ordinance is found by a court of competent jurisdiction to be void or unenforceable, such void or unenforceable provision shall be severed as though it never formed a part of this Ordinance, and all other provisions hereof shall remain in full force and effect.

PASSED AND APPROVED BY THE CITY COUNCIL OF SUNSET VALLEY,
TEXAS, on the 21st day of April, 2009.


Jeffrey Mills, Mayor

ATTEST:


Trish Kabel, City Secretary