

ORDINANCE NO. 090505

AN ORDINANCE AMENDING CHAPTER 4 OF THE CITY'S LAND DEVELOPMENT CODE, PROVIDING REVISED REGULATIONS FOR ADMINISTRATIVE APPROVALS AND VARIANCES FROM WATERSHED PROTECTION REGULATIONS AND RESTRICTIONS ON DEVELOPMENT IN DEVELOPMENT FREE ZONES LOCATED ON SINGLE FAMILY RESIDENTIAL LOTS, PROVIDING FOR PUBLICATION OF NOTICE OF THE AMENDMENT, AND PROVIDING FOR SEVERANCE

WHEREAS, the City's watershed protection regulations have been amended from time to time over several years, necessitating a re-codification of same for the convenience of users of the City's Land Development Code (hereinafter, the "Code");

WHEREAS, the City desires to revise its watershed protection regulations to enable owners of single family properties developed prior to the adoption of the Code to make limited alterations or improvements to their property, while providing for flexible measures to be taken to protect water quality;

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

**Section 1.** All references to sections and subsections used in this Ordinance shall be references to sections and subsections of the Code.

**Section 2.** Subsection (f) Section 4.103 is amended to provide as follows:

- (f) Except as provided in subsections (g) and (h) of this Section in connection with administrative approval of certain incidental improvements, for a single legal lot or two adjacent existing legal lots that are zoned and used or proposed to be used for single family residential purposes, a variance, administrative approval, or modified administrative approval is required, as applicable, as provided in this subsection (f), to develop any portion of the lot that lies within the Water Quality Transition Zone ("WQTZ") or Critical Water Quality Zone ("CWQZ").

In connection with any such variance, administrative approval, or modified administrative approval, all development shall, to the greatest extent practicable, be located first in the Uplands Zone, then in the WQTZ, and lastly, in the CWQZ located on such legal lot (such zones being listed in order from least protected to most protected). For purposes of this subsection 4.103(f), the development in a less protected zone shall be deemed not to be practicable: (I) where a restrictive covenant recorded before April 1, 2009 that is enforceable by one or more third

parties other than the City prohibits development in a manner that precludes the location of a proposed additional development in the less protected zone; (II) for a residential home constructed before April 1, 2009, the requirement of developing first in the least protected zone would necessitate a new front entrance, or reconstruction of the front of such residence; and (III) for a residential home constructed before April 1, 2009, the requirement of developing first in the least protected zone would result in the location in the front or side yard of a swimming pool, accessory structure or other improvement typically located in the backyard of a residence.

(1) If so much of the legal lot lies within the WQTZ that applicable regulations restricting development in the WQTZ would restrict the developer to less impervious cover than otherwise would be permitted if the legal lot lay wholly in the Uplands Zone, the developer may be granted administrative approval, to be issued by the City Administrator or his/her designee, to include impervious cover of up to 14% of the area in the WQTZ on the terms and conditions provided in this subsection (f)(1):

(A) The allowable improvement (not including the mitigation measure required by subsection (f)(1)(3)) does not require the addition of any fill;

(B) The improvement is in compliance with all applicable provisions of this Code, including but not limited to Chapter 2 and Chapter 5, and complies with other City codes, rules and regulations;

(C) The improvement does not impede surface water runoff or drainage patterns and does not increase flooding on upstream or downstream properties; and

(D) The improvement is not used for the storage or processing of hazardous materials or substances other than those normally associated with household or residential use and only in small quantities (e.g., small quantities of gasoline and oil used for the operation of landscape equipment).

(E) One of the three mitigation measures described in subsection 4.103(j) as a rain garden, natural vegetative filter strip, or engineered vegetative filter strip will be provided and maintained at all times to the standard described or referred in subsection 4.103(j) to minimize degradation of water quality, and the owner of the legal lot agrees, as a condition of administrative approval, to impose the requirement on the owner of such legal lot to provide and maintain such measures on the legal lot as a restrictive covenant, to run with the land, in favor of the City, in a form approved by the City Attorney, and to be recorded in the Official Records of Travis County, Texas;

(F) The percentage of impervious cover on the legal lot as a whole does not exceed 18%;

(G) In the event that a transfer of development rights from the affected legal lot has occurred, the amount of impervious cover so transferred shall be deemed to be located on the affected legal lot in determining the amount of impervious cover available, if any, with an administrative approval pursuant to this subsection.

(H) For the purpose of calculating the total impervious cover, items identified as exempt in Section 4.301(e) shall be treated as impervious cover includable in the resulting total amount of impervious cover.

(2) Subject to any rights pursuant to an administrative approval for development in the WQTZ, if so much of the legal lot lies within either the WQTZ or the Critical Water Quality Zone ("CWQZ") that the developer cannot reasonably develop the lot without encroaching into the WQTZ or the CWQZ, or if disallowing development in either the WQTZ or CWQZ located on the legal lot would restrict the developer to less impervious cover than otherwise would be permitted if the legal lot lay wholly in the Uplands Zone, and an administrative approval for development in the WQTZ pursuant to this subsection (f) is insufficient to allow a total of 18% impervious cover on the legal lot, a variance may be approved for development of up to 18% impervious cover in either the WQTZ or CWQZ on the terms and conditions provided in subsections (a) - (d).

(3) For lots developed as part of a subdivision of land of ten (10) or more lots that are restricted, as a result of an allocation of development rights among such lots, to less than 18% impervious cover, the provisions of this subsection (f) shall apply to an administrative approval or modified administrative approval regarding impervious cover on such lot, except that the following shall apply: (i) the requirements of subsections (f)(1)(G) shall not apply; (ii) the requirement of subsection (f)(1)(E) shall apply regardless whether the lot is located wholly or partially in the Uplands Zone or where on the lot the development is proposed; and (iii) the restriction to no more than 14% impervious cover in the WQTZ on the lot will apply, but an administrative approval or modified administrative approval may be granted for up to a total of 18% impervious cover to the extent that any impervious cover that exceeds 14% is located in the Uplands Zone on the lot.

(4) In the event that a restrictive covenant affecting a legal lot provides for a limitation on impervious cover less than that allowed pursuant to this subsection (f) that is enforceable by the City, the Mayor shall, at the request of the affected legal lot owner,

execute an instrument amending such restriction in a manner that limits the amount of impervious cover on the affected lot to the amount allowed pursuant to an administrative approval, modified administrative approval, or variance granted pursuant to this subsection (f). For convenience, any restrictive covenant required by the terms of this subsection (f) in connection with an administrative approval or variance may be combined in one instrument with an amendment of any then existing restrictions regarding impervious cover. In the event that the term of any restrictive covenant, whether or not enforceable by the City, that is applicable to a legal lot provides for a limitation on impervious cover less than allowed pursuant to this subsection (f) but provides for modification or termination in the event that the City's regulations are altered to allow for increased impervious cover on affected property, this subsection (f)(4) shall be effective to automatically terminate or modify such restrictive covenant to the extent of development permitted by this subsection (f) and as provided by the terms of such restrictive covenant. In particular, this subsection (f)(4) shall apply as an action taken by Council to allow the amount of impervious cover on any lot to exceed the amount shown for such lot on Exhibit "A" as stated in Section 3.12 of the Declaration of Covenants, Conditions and Restrictions for Sunset Valley Meadows Subdivision recorded in Document No. 1999032885 of the Official Public Records of Travis County, Texas, provided that the total amount of impervious cover on any such lot does not exceed 18%.

(5) A modified administrative approval may be given for development to which subsection (f)(1) applies on the following basis: An applicant may submit a request for such development with a proposal to provide another means of mitigation not listed in subsection 4.103(j). Such application will be subject to City Council approval, which approval may be given if: (i) the City Council determines that the alternative means of mitigation provides water quality protection equal to or better than the means listed in subsection 4.103(j); (ii) such alternative means does not, as determined by the City Council, require excessive maintenance and/or is not more likely to be subject to equipment malfunction or deterioration; (iii) such alternative means is not unsightly and does not create excessive noise or other conditions that are incompatible with surrounding residential uses, as determined by the City Council; (iv) all conditions and obligations set forth in subsection 4.103(f)(1)(A) - (H) are met; and (v) applicant agrees to comply with any other condition imposed by the City Council in connection with such an approval.

**Section 3.** New subsection (j) of Section 4.103 is added to provide as follows:

(j) The mitigation measures required for an administrative approval pursuant to subsection (f)(1) of this Section 4.103 shall be comprised of (i) a vegetated filter strip; (ii) an engineered filter strip; or (iii) a rain garden. Each such mitigation measure shall be designed and shall perform to the standards for such measure provided in the standards applicable to the particular mitigation measure as provided in the City of Sunset Valley Pollution Reduction Manual appended to this Chapter 4 as periodically amended.

**Section 4.** Subsection (a) of Section 4.402 is amended to provide as follows:

(a) **General.** Except as provided otherwise with regard to water quality controls permitted pursuant to subsections (f), (g) and (h) of Section 4.103, water quality controls and the drainage systems to the controls shall be designed, constructed and maintained at a minimum in accordance with the specifications established by the City of Austin Environmental Criteria Manual. Construction of Water Quality Control facilities must begin not later than eighteen (18) months after approval of a final site plan providing for such facilities, except as otherwise required in the terms of a variance, administrative approval or modified administrative approval. The applicable Watershed Development Permit shall expire if construction is not commenced before such deadline to commence construction.

Water quality controls shall be required according to the criteria established by this Section, except as provided otherwise with regard to water quality controls permitted pursuant to subsections (f), (g) and (h) of Section 4.103, as evaluated for each development application. When water quality controls are required, they shall be shown on the slope map, preliminary plats, preliminary site plan, land use site plan, construction site plan and/or the subdivision construction plans.

(1) For water quality controls located in series, the second or later control following sedimentation, extended detention, sedimentation/filtration or similar structure shall not require an impervious liner.

(2) Water Quality controls shall be required for golf courses, playfields and similar improved recreational uses where fertilizers, herbicides, or pesticides are applied.

(3) Water quality controls are required for all development regardless of the level of impervious cover. Except as provided otherwise with regard to water quality controls permitted pursuant to subsections (f), (g) and (h) of Section 4.103, such controls will be designed to meet the standards of the City of Austin Environmental Manual, as amended, provided that the design therein achieves the greatest pollutant removal efficiency for the particular site conditions.

(4) Vegetative buffers may be used to treat runoff from private driveways and parking areas for single family residential use, or for sidewalks, roof tops, golf courses, playfields, or landscaped areas receiving applications of chemical pesticides or fertilizers. Vegetative buffers shall not be used to treat public, commercial, or multi-family roadways, driveways, or parking areas unless water quality pretreatment is provided. Vegetative buffers shall be designed to meet the applicable standards of the City of Sunset Valley, as well as applicable requirements of the Lower Colorado River Authority (LCRA), City of Austin, and Texas Commission on Environmental Quality, except as provided otherwise with regard to a particular application of a vegetative buffer pursuant

to subsections (f), (g) and (h) of Section 4.103, vegetative buffers must meet or exceed the standards set forth in Section 4.406.

**Section 5.** Subsections (b) and (c) of Section 4.402 are amended to provide as follows:

(b) **Design Criteria.** The interpretation of the requirements set forth in this Chapter shall be made by the City's engineer or designate, unless specified otherwise by the Council. Water quality controls shall be designed and constructed in conformance with the City of Austin Environmental Criteria Manual, as amended, except as provided otherwise with regard to water quality controls permitted pursuant to subsections (f), (g) and (h) of Section 4.103, and be approved by the City's engineer or other designate of the Council.

(1) Water quality control facilities designed in the Water Quality Transition Zone must be placed as close to the Upland Zone line as technically practical.

(2) Plans are to be submitted to the Texas Commission on Environmental Quality for approval, where required pursuant to state statutes and regulations.

(3) All commercial/office/multi-family construction and all single-family and two-family developments with four lots or more consisting of less than five (5) acres per lot shall provide water quality controls that shall comply with the City of Austin's Environmental Manual, as amended.

(4) Water quality control facilities required pursuant to subsection 4.402(b)(3) shall be situated and constructed to capture runoff from residential, commercial and Multi-family developments and associated streets (including boundary streets).

(A) The water quality controls and drainage into the water quality control basins shall be designed to capture and isolate the first flush of runoff as required in Section 4.402(a)(3). All subsequent runoff in excess of the design capacity of the water quality basins shall bypass the water quality facilities and remain segregated in a detention basin up to the designed capacity specified in the City of Austin Drainage Criteria Manual, as amended.

(5) The design of all permanent water quality control sedimentation basins shall allow an average residence time of twenty-four (24) hours for the water quality volume determined in Section 4.402(a)(3).

(6) All basins shall have impervious liners to prevent seepage to groundwater, except as provided in Section 4.402(a)(1) or except as provided otherwise with regard to rain gardens permitted pursuant to subsections (f), (g) and (h) of Section 4.103.

(7) Input to and release from detention basins shall utilize grass-lined swales and/or overland flow dispersion measures in conformance with Section 4.502 of this Chapter.

(8) No portion of a water quality control basin shall be located within the critical water quality zone, except as provided otherwise with regard to rain gardens permitted pursuant to subsections (f), (g) and (h) of Section 4.103.

(c) Maintenance and Compliance.

(1) All water quality control facilities and their appurtenances required for development of a commercial lot shall be maintained either by the property owner, or by the City in accordance with a contractual agreement between the City and the property owner. If the property owner will perform the maintenance, a plan for operation and maintenance shall be submitted to the City along with construction plans and must be approved by the City's engineer or designate.

(A) Water quality control facilities for a commercial lot development shall also require an annual renewal permit in accordance with Section 4.402(d)(2).

(2) All water quality control facilities and their appurtenances required for single family and two family residential development shall be maintained by the City after final acceptance, except where otherwise provided in the terms of any variance given in connection with an approval, and except as otherwise provided in subsections (f)(1) [development up to 14% impervious cover in the WQTZ of single family residential property], (f)(5) [development up to 14% impervious cover in the WQTZ of single family residential property using other mitigation], (g) [single family mitigation measures in the WQTZ], and (h) [single family mitigation measures in the CWQZ] of Section 4.103. The City shall not be required to accept for maintenance any water quality control facility which does not meet the criteria established in the City of Austin Environmental Criteria Manual as amended.

(A) Water quality control facilities and their appurtenances to be maintained by the City shall be dedicated to the City by easement or fee simple as the City may require.

(3) All water quality controls and their appurtenances shall be appropriately maintained in accordance with the maintenance standards established by the City of Austin Environmental Criteria Manual, as amended, except as provided otherwise with regard to water quality controls permitted pursuant to subsections (f), (g) and (h) of Section 4.103.

(4) Duly authorized inspectors of the City shall have the right of entry on the land or premises where property owners are required to maintain drainage or water quality control facilities, at reasonable times, for the purpose of inspection of the maintenance required.

Where facilities are found not to be in good condition, the City shall request in writing that the property owner comply and shall specify the measures required to be taken. If, within thirty (30) days of the notice the maintenance required is not accomplished, the City shall either:

(A) Cause the necessary maintenance to be accomplished and assess the property owner for the City's actual cost; OR

(B) Bring an action for mandatory injunction to require the property owner to accomplish the necessary maintenance.

(5) All drainage easements across private property shall contain the necessary language to permit the required water flow, allow and require the maintenance set out herein, and permit the necessary access by the City for inspection and maintenance. All these shall be properly noted on the site plan and/or subdivision plat.

(6) The required maintenance on a commercial lot by a property owner and the power of the City shall be noted in a restrictive covenant agreement to be filed with the Travis County Deed Records.

(A) The applicant shall designate one person or legal entity, with a current address, to which notice shall be given pursuant to this subsection.

(7) An inspection and renewal permit fee for water quality basins, as specified in the Fee Schedules adopted by ordinance or resolution, shall be paid at the time of development approval.

(8) A water quality facility located wholly on City property and serving nothing but City property or a public works project shall be maintained by the City.

(9) A water quality facility serving both City property and private property zoned nonresidential or devoted to nonresidential use shall be maintained by the owner of the private property served by the facility, unless the City has otherwise entered into an agreement providing for maintenance of the facility by the City.

**Section 6.** Subsection (d)(1) of Section 4.402 is amended to provide as follows:

(1) At least once each year the City shall inspect the premises of each water quality control required to be maintained by the owner, except that in connection with a water quality control provided pursuant to subsections (f), (g), or (h) of Section 4.103, the City may, but shall not be required to perform such inspection.

**Section 7.** New subsection (d)(6) of Section 4.402 is added to provide as follows:



(6) Notwithstanding any other provision of this subsection (d) regarding permit renewals, the provisions of this subsection (d)(6) shall apply to renewals of permits for water quality controls permitted pursuant to subsections (f), (g), and (h) of Section 4.103. A renewal permit shall be obtained on or before each anniversary date of the initial permit on a form provided by the City for such purpose. At the time of sale of the property on which such water quality control is located, a new permit must be obtained, and in connection therewith, the City shall perform an inspection for compliance with applicable design and performance standards. It shall be the responsibility of both the selling and purchasing owner to obtain such renewal permit and to accommodate such inspection by the City.

**Section 8** Subsection (e) of Section 4.402 is amended to provide as follows:

(e) Fiscal Security.

(1) Except with regard to water quality controls permitted pursuant to subsections (f), (g), and (h) of Section 4.103, fiscal security shall be required for development in the City and the ETJ to ensure that the water quality controls required are functioning properly. Fiscal security shall be based on an estimate prepared by the developers engineer and reviewed and approved by the City. The estimate shall include, but is not limited to, the cost to construct the temporary and permanent water quality control facilities for the particular site development.

(2) The fiscal security shall be returned to the applicant no earlier than one year after completion of the development, and only upon the receipt of a certified engineering concurrence letter verifying that the controls are constructed in conformance with the approved design as verified after inspection by the City.

(3) In the event the annual inspection required under this Chapter reveals that the water quality controls are not being properly maintained or repaired, fiscal security shall be required in connection with the issuance of the next annual inspection and renewal permit. The amount of the fiscal security shall be ten percent (10%) of the amount which had been required for the initial construction of the water quality control facilities. This fiscal security shall be retained by the City for a minimum of two (2) years to a maximum of five (5) years; however, the City retains the right to extend or reimpose the requirement for fiscal security at any time inspections reveal that the water quality controls are not being maintained or repaired.

**Section 9.** The initial sentence of Section 4.406, up to subsection (a) of that Section, is amended to provide as follows:

The following standards shall govern the design and implementation of vegetative buffer water quality controls, except as otherwise provided with regard to vegetative buffer water quality controls permitted pursuant to subsections (f), (g), and (h) of Section 4.103.

**Section 10.** Section 17.110 of the Code is amended to provide as follows:

### **17.110 Penalties for Watershed Development Violations**

(a) Any person violating any provision of the Sections of this Code on watershed development which do not relate to health or sanitation within the corporate limits of the City of Sunset Valley, Texas, shall be guilty of a misdemeanor, and, upon conviction, shall be fined an amount not exceeding five hundred dollars (\$500.00). Any person violating any provision of the Sections of this Code on watershed development within the corporate limits of the City of Sunset Valley, Texas, that relates to health or sanitation shall be guilty of a misdemeanor, and, upon conviction shall be fined an amount not exceeding one thousand dollars (\$1,000.00).

(b) Each day that such violation continues shall be a separate offense. Prosecution or conviction under this provision shall never be a bar to any other remedy or relief for violations of these Sections of the Code.

(c) In the event any provision of these Sections of the Code is violated within the corporate limits of the City, or outside such corporate limits but within the area of extraterritorial jurisdiction of the City, the City may institute any appropriate action or proceedings in District Court or another Court of competent jurisdiction to restrain and enjoin the violation of such Sections of the Code.

**Section 11.** Subsection 4.301(h) of the Code is amended to provide as follows:

(h) The projected impervious cover on any single lot or undivided tract in the upland zone shall not exceed eighteen (18) percent. Notwithstanding anything to the contrary in subsections (e) or (f) of this Section 4.301, the items listed in subsections (e) or (f) shall not be excluded from impervious cover calculations to the extent that the area of any such item, when added to the area of impervious cover located on the affected lot, results in a total area in excess of 18% of the area of such lot. The projected impervious cover on any part of any single lot or undivided tract, regardless what zones(s) are located on such lot or undivided tract shall not exceed eighteen percent.

**Section 12.** Subsection (c) of Section 4.107 is amended to provide as follows:

(c) For an existing legal lot to which this section applies, a variance, administrative approval, or modified administrative approval, pursuant to the applicable provisions of Section 4.103 is required to develop any portion of the lot that lies within the Development Free Zone.

**Section 13.** Subsection 4.201(b)(7) is amended to provide as follows:

(7) Structures described in Section 4.301(e) located on existing residential lots for which an administrative approval has been granted by the City pursuant to Section 4.103(g), and development allowed by administrative approval or modified administrative approval pursuant to Section 4.103(f).

**Section 14.** Subsection 4.201(d) is amended to provide as follows:

(d) No development shall occur within the water quality transition zone unless a variance, administrative approval, or modified administrative approval has been obtained

pursuant to Section 4.301(k) or Section 4.103 of this Code and the property and improvements are in compliance with all other provisions of this Code.

**Section 15.** Subsections 4.300 (b) and (c) are amended to provide as follows:

(b) Land within the critical water quality zone, except as development is otherwise allowed pursuant to Section 4.103(f), (g) or (h) (variances, administrative approvals and modified administrative approvals);

(c) Land within the water quality transition zone, unless a variance, administrative approval, or modified administrative approval is obtained pursuant to subsections 4.301(k) and/or Section 4.103(f), (g) or (h) of this Code.

**Section 16.** Subsection 4.301(f) is deleted in its entirety, and no reference appearing elsewhere in the Code to such deleted subsection 4.301(f) shall have the effect of providing for any right, privilege, or procedure formerly included in the provisions of deleted subsection 4.301(f).


**Section 17.** 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.

**Section 18.** A caption that summarizes the purpose of this Ordinance and the penalty for violating this ordinance shall be published as provided by Tex. Loc. Gov't Code § 52.011.

PASSED AND APPROVED BY THE CITY COUNCIL OF SUNSET VALLEY,  
TEXAS, on the 5th day of May, 2009.

  
Jeff Mills, Mayor

ATTEST:

  
Trish Kabel, City Secretary