

ORDINANCE NO. #090908

AN ORDINANCE AMENDING CHAPTER 4 OF THE CITY'S LAND DEVELOPMENT CODE, PROVIDING REVISED REGULATIONS FOR WATERSHED PROTECTION, PROVIDING AMENDMENTS TO REGULATION OF SMALL STRUCTURES ON SINGLE FAMILY RESIDENTIAL LEGAL LOTS, PROVIDING CLARIFYING AMENDMENTS TO ELIMINATE REFERENCES TO THE LOCATION OF SMALL STRUCTURES IN THE CRITICAL WATER QUALITY ZONE, PROVIDING FOR AMENDMENTS TO THE DEFINITION AND CALCULATION OF IMPERVIOUS COVER, PROVIDING AMENDMENTS TO CRITERIA APPLICABLE TO IMPROVEMENTS IN A PROTECTED ZONE, PROVIDING FOR PUBLICATION OF NOTICE OF THESE AMENDMENTS, AND PROVIDING FOR SEVERANCE

WHEREAS, the City's watershed protection regulations have been amended twice in the last two years, necessitating a review to correct references to provisions that have been deleted or amended;

WHEREAS, items identified as impervious cover in recent amendments are not impervious, and, in some cases are treated as pervious or partially pervious by other jurisdictions;

WHEREAS, the City desires to revise its watershed protection regulations to eliminate incorrect references and make other technical corrections, and to provide further guidance in identifying and calculating impervious cover on property zoned and used for single family residential purposes;

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

Section 1. (a) As used herein, the term "Code" refers to the City of Sunset Valley Land Development Code.

(b) All references to sections and subsections used in this Ordinance shall be references to sections and subsections of the Code.

(c) As used herein, interlineation indicates the deletion of text from an existing provision of the Code, and underlining indicates the addition of text to the applicable provision of the Code.

Section 2. The introductory paragraph of 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").

Section 3. Subsection (f)(1)(A) of Section 4.103 is amended to provide as follows:

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

Section 4. Subsection (h) of Section 4.103(h) is deleted in its entirety.

Section 5. 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), and (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), and (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), and (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), and (g) ~~and (h)~~ of Section 4.103, vegetative buffers must meet or exceed the standards set forth in Section 4.406.

Section 6. 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), and (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), and (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), and (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], and (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), and (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 7. 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), or (g), ~~or (h)~~ of Section 4.103, the City may, but shall not be required to perform such inspection.

Section 8. Subsection (d)(6) of Section 4.402 is amended 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), and (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 9. Subsection (e)(1) of Section 4.402 is amended to provide as follows:

(1) Except with regard to water quality controls permitted pursuant to subsections (f), and (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.

Section 10. 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), and (g), ~~and (h)~~ of Section 4.103.

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. 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), or (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), or (g) ~~or (h)~~ of this Code.

Section 13. Subsection (e) of Section 4.301 is amended to provide as follows:

(e) Subject to the provisions of subsection 4.301(h) regarding maximum impervious cover on a single lot or undivided tract, impervious cover calculations will specifically exclude the items described in this subsection that are located in the Uplands Zone or Water Quality Transition Zone on property that is zoned and used for single family residential purposes; provided, however, that the items described in this subsection shall be subject to the administrative approval standards and procedures provided in Section 4.103(g) if located in the Water Quality Transition Zone on property which is zoned and used for Single Family Residential purposes, and further provided that such items located in the Water Quality Transition Zone shall be excluded from impervious cover calculations only to the extent that there is full compliance with any required pollution reduction measure.

(1) ~~Up to The first~~ 350 square feet of an impervious pedestrian sidewalk or walkway that is (i) not greater than 3.5 feet in width; (ii) connects to the primary single-family residential structure, and (iii) has a minimum of 1 foot of pervious cover on each side.

~~(2) Uncovered decks meeting the following standards:~~

~~a. The deck must be constructed on piers or posts to allow for the unabated flow or passage of water underneath the deck;~~

~~b. The deck floor must be constructed of slatted material that provides for a minimum of ¼-inch drainage spaces between the slats; and~~

~~c. The deck must be constructed over pervious cover.~~

(32) Up to 350 square feet of covered decks or gazebos meeting the following specifications:

a. The deck or gazebo must be constructed on piers or posts to allow for the substantially unobstructed flow or passage of water underneath the deck or gazebo;

b. The deck or gazebo floor must be constructed of slatted material that provides for a minimum of ¼-inch drainage spaces between the slats;

c. The deck or gazebo must be constructed over pervious cover; and

d. Each wall of the deck or gazebo, excluding those sides of the structure adjoining a primary single-family residential structure, does not exceed 20-percent of the area measured from the top of the overhead cover to the top of the floor.

~~(43) Water surface area of swimming pools and~~ Up to 350 square feet and a maximum width of eighteen inches (18") of coping, if any, on: a swimming pool, hot tubs, wading ponds, fountains, bird baths, fish ponds, or other similar city-approved structures.

~~(54) Up to 350 square feet of r~~ Rainwater harvesting facilities and structures whose sole purpose is for the collection, treatment, and/or storage of rainwater for on-site use, which are not otherwise excluded from impervious cover and calculations thereof pursuant to subsection (b)(2)(C) of Section 4.301.

~~(65) Up to 350 square feet of solar or wind power structures and facilities used for the primary purpose of providing on-site energy.~~

~~(76) Up to The first~~ Up to 350 square feet of an accessory building that is elevated to allow for the substantially unobstructed flow or passage of water over pervious cover underneath. Nothing in this subsection shall exempt a lot or accessory structure from the requirements of Chapter 2 of the Land Development Code, including but not limited to the limitations on the number of structures allowed per lot.

~~(8) Stones, bricks or other materials used as part of an uncovered patio that are placed on pervious material and that allow for the unobstructed passage of water between the stones, bricks, and other materials, provided that the uncovered patio is not used for vehicular purposes.~~

Section 14. Subsection (b) of Section 4.301 is amended to provide as follows:

(b) (1) Impervious cover and calculations thereof shall include, but shall not be limited to the following:

~~(1) (A)~~ (A) Alleys, streets, and any kind of pavement driveways, and parking areas used for vehicular purposes. For roadways or streets located within the boundaries of a proposed subdivision, the area to be included in an impervious cover calculation will be based on roadway widths of up to and including twenty-four feet (24'). Requirements for sizing water quality controls or detention facilities for runoff from such roadways are not affected by this provision.

~~(2) (B)~~ (B) Buildings, concrete, and other impermeable construction covering the natural land surface.

~~(3)~~ (C) Roadways or streets located adjacent to a development area shall be included in the calculation of impervious cover as described in the City of Austin Environmental Criteria Manual, as amended, except that this provision does not apply to those roadways that either already have Water Quality Controls in place or Water Quality Controls have been previously approved for construction by the City Council and construction of such controls timely occurs as approved before the earlier of expiration of the permit or one year after the issuance of the subject watershed development permit.

~~(4)~~ (D) Site area used for the storage of scrap, auto, and metal salvage.

(2) Impervious cover and calculations thereof shall not include the following when located on property zoned and used for single family residential purposes:

(A) Water surface area of a swimming pool, hot tub, wading pond, fountain, bird bath, fish ponds, or other similar city-approved structure.

(B) Uncovered decks meeting the following standards:

(i) The deck must be constructed on piers or posts to allow for the unabated flow or passage of water underneath the deck;

(ii) The deck floor must be constructed of slatted material that provides for a minimum of ¼-inch drainage spaces between the slats; and

(iii) The deck must be constructed over pervious cover.

(C) City-Approved rainwater harvesting facilities and structures whose sole purpose is for the collection, treatment, and/or storage of rainwater for on-site use and which include and use a tank with a capacity of not less than 720 gallons for collection of rainwater, and are designed to capture a volume of rainwater of not less than four (4) inches of rain per square foot of surface from which rainwater is collected;

(D) Walkways and uncovered patios used for landscaping and pedestrian use only that are placed on pervious material and allow for the unobstructed passage of water between or through the materials used in the construction thereof, as permitted pursuant to regulations adopted by the Director of Public Works for pervious structures.

Section 15. The definition of Impervious Cover provided in subdivision (119) of Section 1.201 is amended to provide as follows:

(119) "Impervious Cover": Roads, parking areas, buildings and other impermeable construction covering the natural land surface; this shall include, but not be limited to, all streets and pavement within a subdivision; See Section 4.301 for inclusions, exclusions, and exemptions from impervious cover calculations.

Section 16. Subsection (g)(2) of Section 4.103 is amended to provide as follows:

(2) In addition to the requirements of subsection (g)(1), an Applicant seeking to construct any structures or buildings described in 4.301(e) other than those described in 4.301(e) (1)[sidewalks], (2)[uncovered decks], (3)[coping of swimming pools, hot tubs, wading ponds, fountains, birdbaths, fish ponds] must, as a condition of the approval, implement and maintain on the property on which the proposed improvement will be located at least two (2) of the Pollution Reduction Practices described in subsection (i) of this Section 4.103, which are more fully described in the CSV Pollution Reduction Manual. The obligation to implement and maintain Pollution Reduction Practices shall be specified in a duly recorded restrictive covenant affecting the property which shall be enforceable by the City. Such obligation to implement and maintain shall remain effective so long as such improvements remain on the property.

Section 17. Subsection (f)(1)(H) of Section 4.103 is amended to provide as follows:

(H) For the purpose of calculating whether the total maximum impervious cover of 18% is reached, items identified as ~~exempt~~ excluded in Section 4.301(e) shall be treated as impervious cover includable in the resulting total amount of impervious cover.

Section 18. New subsection (f)(1)(I) is added to Section 4.103 to provide as follows:

(I) A minimum setback of at least 75 feet shall be maintained between the critical water quality zone and developed, impervious, or pollutant source areas, or areas of disturbed vegetation or soil in the water quality transition zone. Within the aquifer recharge zone, a 100 foot minimum setback shall also be preserved between developed, impervious, or pollutant source areas, or areas with disturbed vegetation or soil in the water quality transition zone and any identified recharge features.

Section 19 Subsection (f)(5) of Section 4.103 is amended to provide as follows:

(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 20. Subsection (g)(1) of Section 4.103 is amended to provide as follows:

(g) (1) Water Quality Transition Zone Small Structures - Subject to subsections (g)(1)(A) - ~~(DE)~~, below, the City Administrator or his/her designee shall grant Administrative Approval of an application to construct, operate, and maintain in the WQTZ on a legal lot zoned and used for single-family residential purposes improvements described in Section 4.301(e), provided the Applicant demonstrates that the following conditions are met:

(A) The allowable improvement 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); and

(E) A minimum setback of at least 75 feet shall be maintained between the critical water quality zone and developed, impervious, or pollutant source areas, or areas of disturbed vegetation or soil in the water quality transition zone. Within the aquifer recharge zone, a 100 foot minimum setback shall also be preserved between developed, impervious, or pollutant source areas, or areas with disturbed vegetation or soil in the water quality transition zone and any identified recharge features.

Section 21. The City Administrator shall arrange for the publication of the Code as amended pursuant to this Ordinance.

Section 22. 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 23. 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 2nd day of January, ~~2009~~ 2010



Jeff Mills, Mayor

ATTEST:



Ree Lyn Henry
City Secretary