

# General Planning Standards for All

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Public Review

# Requirements

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# Article 23-3A: Purpose and Applicability

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### 23-~~2A~~3A-1010 Purpose

This Chapter provides standards and regulations for the following purposes: to provide parkland; to provide for the protection and replenishment of urban forest resources; to provide for the protection of water quality and protection from flooding; and to encourage the creation and preservation of affordable housing. These aspects are all essential to the development of a healthy, sustainable and desirable city environment. The interests of the community and the goals of the Comprehensive Plan and Zoning Code are further ensured through the application of this Chapter.

### 23-~~2A~~3A-1020 Applicability

This Chapter applies to all development within the City of Austin and the ETJ.



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~~23-2~~  
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# Article 23-3B: Parkland Dedication

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## 23-3 B-1010 Purpose and Applicability

(A) **Purpose.** The City of Austin has determined that recreational areas in the form of public parks are necessary for the well-being of residents. The City has further determined that the approval of new residential development is reasonably related to the need for additional parkland and park amenities to serve new development. This Article establishes a fair method for determining parkland dedication, or the payment of a fee in-lieu of dedication, to be required as a condition to the approval of new development in an amount proportionate to the impact of development on existing parks and established levels of service.

### (B) Applicability

- (1) The requirements of this Article apply to:
  - (a) A residential Subdivision in the planning jurisdiction;
  - (b) A Site Plan in the zoning jurisdiction that includes residential units or a hotel- motel use; and
  - (c) A Residential Building Permit, as provided under Section 23-3B-1020 (Dedication of Land or Payment In-Lieu at Building Permit).
- (2) The following are exempt from the requirements of this Article:
  - (a) A Subdivision or Site Plan for which parkland was previously dedicated or payment made under this Title, except for the dwelling units or lots that exceed the number for which dedication or payment was made;
  - (b) Development within the City's extraterritorial jurisdiction that is within Travis County and governed by Title 30 (Austin/Travis County Subdivision Regulations); and
  - (c) Affordable dwelling units that are described in Article 23-3E (Affordable Housing).

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## 23-3 B-1020 Dedication of Land or Payment In-Lieu at Building Permit

(A) Dedication of parkland or payment in lieu of dedication, as determined by the Park Director under this Article, is required as a condition to obtaining a Building Permit for residential development located within a Subdivision that:

- (1) At the time of approval, was deemed to be exempt from a requirement to dedicate parkland or pay a fee in-lieu of dedication based on the assumption that development within the Subdivision would be limited to non-residential uses; and

- (2) Has not subsequently developed with a use for which parkland was dedicated or a fee in-lieu of dedication was paid.
  - (B) The amount of a fee in-lieu of parkland dedication under this Section shall be calculated in accordance with Section 23-3B-2010 (Dedication of Parkland) and Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication).
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## **23-3            B-1030    Administrative Authority**

- (A) The Park Director is authorized to adopt administrative rules and take other actions that are necessary to implement this Article.
- (B) The Park Director shall, at a minimum, adopt the following by administrative rule under Chapter 1-2 (Administrative Rules):
  - (1) A Deficient Park Area Map illustrating shortages in parkland;   and
  - (2) Parkland Dedication Operating Procedures establishing:
    - (a) Boundaries for service areas required by Section 23-3B-3030 (Fee Payment and Expenditure) for use of a fee in-lieu of parkland dedication and parkland development fee;
    - (b) General standards for dedicated parkland under Section 23-3B-2020 (Standards for Dedicated Parkland);
    - (c) Methodology for determining:
      - (i) Parkland cost factor and park level-of-service under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication); and
      - (ii) Park development cost factor and facilities level-of-service under Section 23- 3B-3020 (Parkland Development Fee); and
    - (d) Other provisions deemed necessary for implementing this Article.
- (C) Before initiating the administrative rules process, as required by Subsection (B) of this Section, the Park Director shall present a proposed Deficient Park Area Map and Parkland Dedication Operating Procedures to the Parks Board for a recommendation.

## Division 23-3B-2: Dedication

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### 23-3 B-2010 Dedication of Parkland

- (A) An applicant seeking Subdivision or Site Plan approval must provide for the parkland needs of the residents by the dedication of suitable land for park and recreational purposes under this Article or by payment of a fee in-lieu of dedication under Section 23- 3B-3010 (Fee In-Lieu of Parkland Dedication).
- (B) For a Subdivision, the area to be dedicated must be shown on the preliminary plan and final plat as "Parkland Dedicated to the City of Austin." The subdivider shall dedicate to the City all parkland required by this Article when a plat is approved, except that the Park Director may defer dedication of parkland to Site Plan approval if development within the Subdivision will require a Site Plan under Chapter 23-6 (Site Plan).
- (C) For a Site Plan, the area to be dedicated must be shown on the Site Plan as "Parkland Dedicated to the City of Austin" and in a deed to the City. The applicant shall dedicate the parkland required by this Article to the City by deed before the Site Plan is released, except that dedication may be deferred until issuance of a certificate of occupancy if construction of amenities is authorized under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication) or Section 23-3B-3020 (Parkland Development Fee). In negotiating a deed under this Section, the Park Director may require that a reasonable portion of the total impervious cover permitted on the site be allocated to the dedicated parkland to allow for construction of parkland amenities without unduly impacting development of the proposed Site Plan.
- (D) For a Building Permit that is subject to Section 23-3B-2020 (Dedication of Land or Payment In-Lieu at Building Permit), the area to be dedicated must be shown in a deed to the City. The applicant shall dedicate to the City all parkland required by this Article before a Building Permit is issued.
- (E) Except as provided under Subsection ( J ), the amount of parkland required to be dedicated to the City is 9.4 acres for every 1,000 residents, as determined by the following formula:  

$$(9.4 \times \text{Number of Units} \times \text{Residents per Unit}) / 1,000 = \text{Acres of Parkland}$$
- (F) In calculating the amount of parkland to be dedicated under this Section, the number of residents in each dwelling unit is based on density as follows:



~~Table 23-3B-2010.A: Calculation of Parkland~~

<del>Density</del>	<del>Residents in Each Dwelling</del>
<del>Low Density: Not more than 6 units per acre</del>	<del>2.8</del>

~~Table 23-3B-2010(A): Calculation of Parkland~~

<del>Density Classification</del>	<del>Residents in Each Dwelling Unit</del>
<del>Low Density: Not more than 6 units per acre</del>	<del>2.8</del>
<del>Medium Density: More than 6 and not more than 12 units per acre</del>	<del>2.2</del>
<del>High Density: More than 12 units per acre</del>	<del>1.7</del>
<del>Hotel-Motel Density: Total number of rooms</del>	<del>1.7 × Annual Occupancy Rate</del>
<del>Medium Density: More than 6 and not more than 12 units per acre</del>	<del>2.2</del>



~~High Density: More than 12 units per acre—1.7~~

~~Hotel-Motel Density: Total number of rooms  $1.7 \times$  Annual Occupancy Rate~~

- (G) If the density of a development is not known:
- (1) The density is assumed to be the highest permitted in the Zone, or if the property is not zoned, 24 dwelling units per acre; or
  - (2) For a residential Subdivision within the extraterritorial jurisdiction, the applicant may reduce the assumed density by agreeing, in a manner that is enforceable by the City and approved by the City Attorney, that any subsequent increases in density may require additional dedication of parkland under this Section or payment of a fee in- lieu of dedication under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication).
- ~~(H)~~ (H) The applicant seeking a Subdivision or Site Plan must pay all costs of transferring the parkland to the City, including the costs of:
- (1) An environmental site assessment without any further recommendations for clean- up, certified to the City not earlier than the 120th day before the closing date;
  - (2) A Category 1(a) land title survey, certified to the City and the title company not earlier than the 120th calendar day before the closing date;
  - (3) A title commitment with copies of all Schedule B and C documents, and an owner's Title policy;
  - (4) A fee simple deed;
  - (5) Taxes prorated to the closing date;
  - (6) Recording fees; and
  - (7) Charges or fees collected by the title company.
- (I) Development within a Planned Unit Development (PUD) Zone may, if required by the ordinance adopting the PUD, be subject to additional parkland requirements and may be entitled to count dedicated parkland towards meeting open space requirements under Section 23-4D-~~61208130~~ (Planned Unit -Development Zone).
- (J) ) The amount of parkland required to be dedicated within the Parkland Dedication Urban Core may not exceed 15 percent of gross site area for the development required to provide the dedication except upon consent of the applicant or as authorized under this Subsection.
- (1) The Park Director may request that the Land Use Commission approve dedication in excess of the 15 percent cap, up to the amount required under Subsection (E), if doing so is necessary to address a critical shortage of parkland for an area identified in the\_

Deficient Parkland Area Map or provide connectivity with existing or planned parks or recreational amenities.

- (2) Before the Land Use Commission considers a request under this Subsection for approval, the Park Director shall present the request to the Parks Board for a recommendation.
- (3) In considering a request from the Park Director under this Subsection, the Land Use Commission may:
  - (a) Deny the Parks Director request and limit the required dedication to no more than 15 percent of gross site area; or
  - (b) Require additional parkland dedication beyond the 15 percent cap, up to the lesser of either the amount required under Subsection (E) or the minimum amount the Land Use Commission finds to be necessary based on the criteria in Subsection ( J)(1) and the parkland dedication operating procedures.
- (4) If an applicant dedicates less than the amount of land required for dedication under Subsection (E) due to the cap imposed by this Subsection, the Park Director shall require payment of a fee in-lieu of dedication under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication) for the remaining undedicated land.
- (5) A request by the Park Director under this Subsection may be consolidated with an appeal by the applicant under Subsection 23-3B-3010 (F) (Payment of Fee In-Lieu Dedication).

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### **23-3 B-2020 Standards for Dedication of Parkland**

- (A) In addition to the requirements of this Article, land to be dedicated as parkland must meet the requirements of this Subsection.
  - (1) Parkland must be easily accessible to the public and open to public view so as to benefit area residents, enhance the visual character of the City, protect public safety, and minimize conflicts with adjacent land uses.
  - (2) On-street and off-street connections between residential neighborhoods shall be provided, wherever possible, to provide reasonable access to parks and open space areas.
  - (3) In addition to the requirements of this Subsection, parkland must comply with the standards in the Comprehensive Plan, the Park and Recreation Long-Range Plan, the Environmental Criteria Manual, and the Parkland Dedication Operating Procedures.
- (B) The Park Director shall determine whether land offered for dedication complies with the standards for dedication under Subsection (A) and may require an applicant seeking a Subdivision or Site Plan applicant to provide information deemed necessary to determine compliance.
- (C) Unless otherwise required under the Parkland Dedication Operating Procedures, 50 percent of acreage in the 100 year floodplain that is dedicated as parkland may be credited toward fulfilling the requirements of this Article if any adjoining land within the 25 year floodplain is also dedicated as parkland. The land within the 25 year floodplain may not be credited toward fulfilling the requirements of this Article.

- (D) Land identified on the Deficient Parkland Area Map maintained by the Parks and Recreation Department that does not otherwise comply with the standards for parkland dedication may be accepted as dedicated parkland if the Park Director determines that the land will provide recreational or educational opportunities for the surrounding community. In this event, 50 percent of the acreage may be credited toward fulfilling the requirements of this Article.

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**23-3            B-2030   Private Parkland**

- (A) The Park Director may allow up to a 100 percent credit toward fulfilling the requirements of:
  - (1) Section 23-3B-2010 (Dedication of Parkland) for privately owned and maintained parkland or recreational easements that are available for use by the public and meet the standards of the Parkland Dedication Operating Procedures; and
  - (2) Section 23-3B-3020 (Parkland Development Fee) for recreational facilities that are located on privately owned and maintained parkland and available for use by the public.
- (B) The Park Director may allow up to a 100 percent credit toward fulfilling the requirements of this Article for private parkland in a Subdivision or Site Plan located outside the City limits, if:
  - (1) The Park Director determines that the private parkland meets City parkland standards; and
  - (2) The land owner agrees to dedicate the private parkland to the City when the City annexes the land for all purposes.
- (C) If private parkland will include construction of recreational amenities, the applicant must post fiscal surety in an amount equal to the fee in-lieu provided for under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication) and the development fee required under Section 23-3B-3020 (Parkland Development Fee). The fiscal surety must be posted before final plat approval or before Site Plan release, for any portion of the Subdivision that will require a Site Plan.
- (D) Yards, setback areas, and private personal open spaces required by this Title may not be counted as private parkland under this Section, except for a required setback or yard that includes a public trail.
- (E) If private parkland is allowed, a recreation easement must be recorded prior to Site Plan or Subdivision approval.

## Division 23-3B-3: Fees

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### 23-3 B-3010 Fee In-Lieu of Parkland Dedication

- (A) The Park Director may require or allow an applicant seeking Subdivision or Site Plan approval to deposit with the City a fee in-lieu of parkland dedication under Section 23-3B- 2010 (Dedication of Parkland) if:
  - (1) The Park Director determines that payment of a fee in-lieu of dedication is justified under the criteria in Subsection (B); and
  - (2) The following additional requirements are met:
    - (a) Less than six acres is required to be dedicated under Section 23-3B-2010 (Dedication of Parkland); or
    - (b) The land available for dedication does not comply with the standards for dedication under Section 23-3B-2020 (Standards for Dedicated Parkland).
- (B) In determining whether to require dedication of land under Section 23-3B-2010 (Dedication of Parkland) or allow payment of a fee in-lieu of dedication under this Section, the Park Director shall consider whether the Subdivision or Site Plan:
  - (1) Is located within the Deficient Park Area Map;
  - (2) Is adjacent to existing parkland;
  - (3) Has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
  - (4) Is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
  - (5) Would provide increased connectivity with existing or planned parks or recreational amenities.
- (C) The Park Director shall, at the request of an applicant, determine whether payment of a fee in-lieu of parkland dedication will be allowed prior to formal submittal of a Site Plan or Subdivision application. The Park Director may establish requirements for obtaining the determination in the Parkland Dedication Operating Procedures and may require an applicant to provide information relevant to the criteria in Subsection (B). A determination issued under this Subsection is valid for a period of one-year from the date of issuance.
- (D) The amount of the fee in-lieu of parkland dedication is established in the annual fee schedule based on a recommendation by the Park Director in accordance with this Subsection.

(1) Fee In-Lieu of Dedication

~~Table 23-3B-3010.A: In Lieu Fee Calculation~~

<del>Density</del>	<del>Residents in Each Dwelling</del>
<del>Low Density: Not more than 6 units per acre</del>	<del>2.8 x Land Cost per Person</del>
<del>Medium Density: More than 6 and not more than 12 units per acre</del>	<del>2.2 x Land Cost per Person</del>



~~High Density: More than 12 units per acre 1.7 x Land Cost per Person~~

~~Hotel-Motel Density: Total number of rooms — 1.7 x Annual Occupancy Rate x Land Cost per Person~~

<b>Table 23-3B-3010(A): In Lieu Fee Calculation</b>	
<b>Density Classification</b>	<b>Residents in Each Dwelling Unit</b>
<del>Low Density: Not more than 6 units per acre</del>	<del>2.8 x Land Cost per Person</del>
<del>Medium Density: More than 6 and not more than 12 units per acre</del>	<del>2.2 x Land Cost per Person</del>
<del>High Density: More than 12 units per acre</del>	<del>1.7 x Land Cost per Person</del>
<del>Hotel-Motel Density: Total number of rooms</del>	<del>1.7 x Annual Occupancy Rate x Land Cost per Person</del>

(2) For purposes of calculating “Land Cost per Person” to determine the fee in-lieu under Subsection (D)(1).

(3) Land Cost per Person=(Parkland Cost Factor)/(Parkland Level of Service)

(4) Where:

(a) “Parkland Cost Factor” is determined by the Park Director based on the average purchase price to the City for acquiring an acre of parkland, excluding a metro or district park or golf course; and

(b) “Parkland Level-of-Service” is:

Parkland Level of Service=(City Population)/(Net Park Acreage) Where:

(i) “City Population” is determined by the City Demographer; and

(ii) “Net Park Acreage” is the total citywide acreage of neighborhood parks, pocket parks, and greenways, as determined by the Park Director prior to adoption of the annual fee ordinance by the Council.

(E) If the Park Director determines that payment of a fee in-lieu of parkland dedication is authorized under this Section for only a portion of the land required to be dedicated under Section 23-3B-2010 (Dedication of Parkland), the Park Director may allow an applicant to pay a fee in-lieu for that portion and require that the remaining land be dedicated. If an applicant dedicates parkland under Section 23-3B-2010 (Dedication of Parkland), the Park Director may not include that acreage in calculating the fee in-lieu required by this Section for any remaining land not included in the dedication.

(F) If the Park Director rejects a request to pay a fee in-lieu of dedication under Subsection -(B), the applicant may appeal the Park Director’s decision to the Land Use Commission consistent with the procedures in ~~Division 23-2X21 (Appeals) of this Chapter.~~ Before the Land Use Commission considers the appeal, the Park Director shall present the case to the -Parks Board for a recommendation, but failure by the Parks Board to act shall not prohibit the Land Use Commission from considering the appeal.

**23-3 B-3020 Parkland Development Fee**

(A) An applicant must pay a parkland development fee as a condition to Subdivision

or Site Plan approval in order to ensure that land is developed with recreational amenities sufficient for park use, except as provided in Subsection (C).

(B) The amount of the development fee is established in the annual fee schedule based on a recommendation by the Park Director in accordance with this Subsection.

(1) Parkland Development Fee

<del>Table 23-3B-3020.A: Parkland Development Fee</del>	
<del>Density</del>	<del>Residents in Each Dwelling</del>
<del>Low Density: Not more than 6 units per acre</del>	<del>2.8 x Park Development Cost per Person</del>
<del>Medium Density: More than 6 and not more than 12 units per acre</del>	<del>2.2 x Park Development Cost per Person</del>



~~High Density: More than 12 units per acre — 1.7 x Park Development Cost per Person~~

~~Hotel-Motel Density: Total number of rooms 1.7 x Annual Occupancy Rate x Park Development Cost per Person~~

**Table 23-3B-3020(A): Parkland Development Fee**

Density Classification	Residents in Each Dwelling Unit
<u>Low Density: Not more than 6 units per acre</u>	<u>2.8 x Park Development Cost per Person</u>
<u>Medium Density: More than 6 and not more than 12 units per acre</u>	<u>2.2 x Park Development Cost per Person</u>
<u>High Density: More than 12 units per acre</u>	<u>1.7 x Park Development Cost per Person</u>
<u>Hotel-Motel Density: Total number of rooms</u>	<u>1.7 x Annual Occupancy Rate x Park Development Cost per Person</u>

(2) For purposes of determining the development fee under Subsection (B)(1):  
 Park Development Cost = (Park Development Cost Factor) / (Park Facilities Level of Service)

Where:

(a) "Park Development Cost Factor" is determined by the Park Director based on the average cost of developing an acre of parkland up to the standards of a neighborhood park; and

(b) "Park Facilities Level-of-Service" -is:

Park Facilities Level of Service = (City Population) / (Number of Developed Parks) Where:

(i) "City Population" is determined by the City Demographer; and

(ii) "Number of Developed Parks" is the total number of parks developed with a recreational amenity or trail, as determined by the Park Director prior to adoption of the annual fee ordinance by the Council.

(C) The Park Director may allow an applicant to construct recreational amenities on public parkland or private parkland, if applicable, in-lieu of paying the development fee required by this Section. In order to utilize this option, the applicant must:

(1) Post fiscal surety in an amount equal to the development -fee;

(2) If a dedication of land is required, construct recreational amenities prior to the dedication in a manner consistent with the parkland dedication operating procedures; and

(3) Document the required amenities concurrent with Subdivision or Site Plan approval, in a manner consistent with the parkland dedication operating procedures.

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**23-3 B-3030 Fee Payment and Expenditure**

- (A) Payment of a fee required under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication) or Section 23-3B-3020 (Parkland Development Fee) must be paid as required by this Subsection.
  - (1) If a fee in-lieu of dedication or a parkland development fee is required as a condition to Subdivision approval, the applicant must deposit the fee with the City before final plat approval. The applicant may defer payment of a fee until Site Plan approval unless development proposed within the Subdivision is exempt from the requirement to submit a Site Plan under Division 23-6A-2 (Exemptions).
  - (2) If a fee in-lieu of dedication or a parkland development fee is required as a condition to Site Plan approval, the applicant must deposit the fee with the City before the Site Plan may be approved.
- (B) The Park Director shall place fees paid under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication) or Section 23-3B-3020 (Parkland Development Fee) into separate funds and use the fees consistently with the requirements of this Subsection.
  - (1) The Park Director shall use fees paid under Section 23-3B-3010 (Fee In-Lieu of Parkland Dedication) solely to acquire parkland or recreational easements that will benefit residents of the development for which the fees are assessed, except as provided in Subsection (B)(3). These parkland or recreational easements must be located within a service area designated by the Park Director under the Parkland Dedication Operating Procedures.
  - (2) The Park Director shall use fees paid under Section 23-3B-3020 (Parkland Development Fee) solely to acquire and develop recreational amenities that will benefit residents of the development for which the fees are assessed. These parkland or recreational easements must be located within a service area designated by the Park Director under the Parkland Dedication Operating Procedures.
  - (3) The Park Director may use fees paid under 23-3B-3010 (Fee In-Lieu of Parkland Dedication) consistent with the purposes described in Subsection (B)(2) if, within one year from the date the fees are appropriated for expenditure, the Park Director determines that land which meets the requirements of Section 23-3B-2020 (Standards for Dedicated Parkland) is unavailable for purchase within the service area for which the fees were assessed.
- (C) The City shall expend a fee collected under this Article within five years from the date the fees are appropriated for expenditure by the Park Director. This period is extended by five years if, at the end of the initial five-year period, less than 50 percent of the residential units within a Subdivision or Site Plan have been constructed.
- (D) If the City does not expend a fee payment by the deadline required in Subsection (C) the Subdivision or Site Plan applicant who paid the fee may request a refund under the requirements of this Subsection.
  - (1) A refund may only be requested for unbuilt units for which a fee in-lieu of dedication was paid. The refund request must be made in writing and filed with the Parks and Recreation Department not later than 180 calendar days after the expiration of the deadline under Subsection (C).
  - (2) If the refund request is timely filed, the Park Director shall:

- (a) Refund the amount of unspent fees that were collected under this Article in connection with approval of a Subdivision or Site plan; and
- (b) If a Site Plan for which fees were assessed was subsequently revised to reduce the number of units, recalculate the amount due based on the reduced number of units and refund any fees paid in excess of that amount.

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# Article 23-3C: Urban Forest Protection and Replenishment

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# Division 23-3C-1: General Provisions

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## 23-3C-1010 Intent

The urban forest has social, ecological, cultural, economic, historical, and aesthetic –benefits for the citizens of Austin. A 2016 study by the U.S. Forest Service and the Texas A&M Forest Service estimated that there are nearly 34 million trees in the City of Austin, and trees in the city save citizens almost \$19 - million annually in reduced residential -energy costs, they sequester carbon at almost \$12 \_million a year, and have \_a standalone,- compensatory value of \$16 billion. The study also found that: (1) trees less than five inches in diameter (dbh) account for 61 percent of the canopy cover, (2) trees 8 to 19 inches in diameter (dbh) have greater leaf area relative to abundance, and (3) the larger the tree- the greater the environmental benefits. Consequently, the urban forest is an integral\_ part of the City’s infrastructure and the City has an interest in planning and protecting this resource with -the goal of increasing the urban forest within the City to maximize the aforementioned benefits.\_

## 23-3 C-1020 Applicability

- (A) This Article applies in the zoning jurisdiction.
- (B) This Article applies to City projects or projects on City property in and outside the zoning jurisdiction.
- ~~(C) Public~~Young public tree regulations apply to:
- ~~(1)(C) Two inch and greater trees apply in the street-side~~public right of way and on City owned or operated parkland.
- ~~(2) Eight inch and greater apply to all other City lands.~~

- (D) Keystone tree regulations apply to all ~~development~~private or public land.
- (E) Protected tree regulations apply to all ~~development~~private or public land.
- (F) Heritage tree regulations apply to all ~~development~~private or public land.

Table 23-3C-1020.A: Applicability	
Tree	Location
2" and Greater Public Trees	Right of Way and City Parkland
Keystone Trees	All Development
Protected Trees	All Development
Heritage Trees	All Development

Table 23-3C-1020(A): Applicability	
Tree	Location
Young Public Trees	Right of Way and City Parkland
Keystone Trees	All property (incentivized on residential property)
Protected Trees	All property
Heritage Trees	All property

**23-3 C-1030 Definitions**  
**23-3 Terms in this Article:**

Table 23-3C-1030.A: Regulated Trees	
Regulatory	Size
Regulatory	Size

(A) Regulated trees trunks are measured per the Environmental Criteria Manual and are defined as:

Young Public Trees	2" <u>inch</u> - 7.9" <u>diameter inch dbh</u>
Keystone Trees	8" <u>inch</u> - 18.9" <u>diameter inch dbh</u>
Protected Trees	19" <u>diameter inch dbh</u> or greater
Heritage Trees (certain species)	24" <u>diameter inch dbh</u> or greater (certain species)

- (1) Young ~~Public Trees~~ public trees - 2 diameterdbh inches to 7.9 diameterdbh inches (at least 2/3 of trunk must occur on public property)
- (2) Keystone ~~Tree~~ trees - Public or private 8 to 18.9 diameterdbh inches (all species recognized though preservation goals differ by species and tree health - see the Environmental Criteria Manual for species specific guidance and rules)
- (3) Protected ~~Tree~~ trees - Public or private 19 diameterdbh inches or greater (all species recognized though preservation goals differ by species and tree health - see the Environmental Criteria Manual for species specific guidance and rules)
- (4) Heritage ~~Tree~~ trees - Public or private 24 diameterdbh inches or greater of following species:
  - (a) Ash, Texas
  - (b) Cypress, Bald

- ~~(e)~~ Elm, American
- ~~(d)~~(c) Elm, and Cedar
- ~~(d)~~ Madrone, Texas ~~(f)~~
- ~~(e)~~ Maple,  
Bigtooth
- ~~(g)~~(e) (f) All  
Oaks
- ~~(h)~~(g) Pecan
- ~~(i)~~ Walnut, Arizona
- ~~(j)~~(h) Walnut, and Eastern Black

This list of eligible heritage tree species may be supplemented, but not reduced, as prescribed by rule.



~~(B)~~ Natural Character of the Landscape - Natural character varies across ~~geographic and physiographic landscapes in~~ the city and could be influenced by prior land ~~use practices.~~ uses. In general, protecting natural character on ~~developed~~ redeveloped land is principally through ~~protecting individual trees,~~ greenfield. Greenfield development shall protect intact wooded areas with

- ~~(B)~~ contiguous canopy coverage and individual trees within the development project. Historic agricultural and degraded land shall focus on protecting existing tree canopy, but where ~~no~~ canopy exists the emphasis shall be on aggressively replanting site appropriate trees. Protection of individual trees is considered priority for urban infill development.
- (C) ~~Removal~~Tree removal means an act that causes or may be reasonably expected to cause a tree to die, including:
  - ~~(1) uprooting;~~
  - (1) severingUprooting;
  - (2) Severing or injuring the trunk;
  - (3) ~~damaging~~Damaging the critical root zone; and/or
  - ~~(4) excessive pruning.~~
  - (4) Pruning more than 25 percent of the live canopy.
- (D) Tree condition related to fee waivers and review criteria:
  - (1) Dead: biological death of vascular tissue to the extent that recovery of the tree is not possible.
  - (2) Fatally Diseased: abnormal growth or dysfunction of a tree that is not recoverable and/or is communicable that results in tree mortality.
  - (3) Imminent Hazard: failure has started or is most likely to occur in the near future, even if there is no significant wind or increased loading.

**23-3            C-1040    Administration**

- (A) A City Arborist, appointed by the director of the ~~Development Services Department, managing department,~~ shall implement this Article ~~and the right of way tree regulations located in (TBD).~~
- (B) The ~~Development Services Department~~City Arborist shall adopt administrative rules for the implementation of this Article. The City Arborist will also adopt rules, in conjunction with the Public Works Department, for right of way tree regulations located in (TBD) and associated rules in the Environmental Criteria Manual.
- (C) The rules shall include:
  - (1) ~~tree~~Tree survey and assessment ~~requirements~~;
  - (2) ~~application~~Application depictions and preservation standards;
  - (3) ~~actions~~Actions that will constitute impacts or removal;
  - ~~(4) mitigation measures;~~
  - (4) methodsMethods to protect regulated trees during development;
  - (5) Mitigation measures;
  - ~~(5)~~(6) Planting requirements for single-family lots; and
  - ~~(6)~~(7) criteriaCriteria and performance indicators, including a canopy cover goal, for assessing the state of the urban forest.



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**23-3**    **C-1050**    **Application Requirements**

- (A) An application must:
  - (1) ~~Waiver~~ Include necessary review and inspection information as prescribed by the Environmental Criteria Manual; and
  - (2) Demonstrate that the design will preserve the existing natural character of the landscape by incorporating regulated trees unless they meet removal criteria. Removal criteria are located in 23-3C-2020 with further detail in the Environmental Criteria Manual.
- (B) For an application that proposes potential impacts or removal to a regulated tree, the City Arborist must review the application and make a compliance determination before the application may be administratively approved.
  - (1) Exception: If a tree has sustained substantial damage by natural causes and is an imminent hazard to life or property, a person may remove this tree prior to submitting an application. The City Arborist shall establish rules for submitting retroactive applications under this exception to substantiate the removal.
- (C) If a regulated tree is permitted for removal, the City Arborist shall require mitigation, including the planting of replacement trees, as a condition of approval. Mitigation options are listed in the Environmental Criteria Manual. Mitigation shall be wholly satisfied on the proposed development prior to permit release by the Director.
- ~~(D)~~ Eligibility for submitting application:
  - (1) For a regulated tree located on public property or a public street or easement, an application may be filed by:
    - (a) A City department, public utility, or political subdivision with the authority to install utility lines or other public facilities in or above the property, street, or easement.
  - (2) For a regulated tree located on private property, an application may be filed by:
    - (a) The property owner or agent, on which the tree is located; or
    - (b) The City, if the tree is fatally diseased, dead, or an imminent hazard and is a high risk to the public.
- (E) An application fee is waived if the application is for tree removal under Section 23-3C-2020(A)(3), (4), or (5). Application fees are also waived if the application is for the operation and maintenance of an occupied residential structure.

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**23-3**    **C-1060**    **Modification of City Requirements**

- (A) If enforcement of a City department policy, rule, or design standard will result in removal of a regulated tree, the City Arborist may request that the responsible City department waive or modify the policy, rule, or design standard to the extent necessary to preserve the tree.



- (B) The responsible City department may waive or modify the policy, rule, or design standard after determining that a waiver or modification will not result in a serious or imminent adverse effect.
- (C) The City Manager shall resolve differences of opinion between the City Arborist and another City department under this Section.

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**~~23-3~~      ~~C-1070~~    **Action On Applications****

- ~~(A) The City Arborist shall review and take action (e.g. approve, statutorily deny, etc.) on an application to remove or impact a regulated tree as specified in the Environmental Criteria Manual.~~
- ~~(B) Review timelines defer to the associated development permit type as prescribed by rule.~~
- ~~(C) If a Tree Ordinance Review Application is submitted, and is not associated with development, the review shall occur as prescribed by rule.~~
- ~~(D) Predevelopment consultation Tree Ordinance Review Applications are not subject to permitting timelines.~~

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**~~23-3~~      ~~C-1080~~    **Effective Date And Expiration Of Approval****

- ~~(A) Approval of an application to remove or impact a regulated tree is effective:
 
  - ~~(1) Immediately after approval unless associated with development plans; or~~
  - ~~(2) When the associated development permit(s) are approved and active.~~~~
- ~~(A)(B) An approval to remove a regulated tree expires:~~

- 
- ~~(1) One year after its effective date if the permit is not associated with development; or~~
  - ~~(2) When the development permit expires.~~

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**~~23-3C-1060~~1090      **Reports****

The City Arborist shall report annually to the Environmental Commission. The report shall include, but is not limited to development impacts to regulated trees and the state of the urban forest.

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# Division 23-3C-2: ~~General Administration for Regulated Young Public, Keystone, and Protected Trees~~

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## 23-4 ~~C-2010~~ **Development Application Requirements**

~~(A)(F) An application must:~~

- ~~(1) include necessary review and inspection information as prescribed by the Environmental Criteria Manual; **Young Public Tree and**~~
- ~~(2) demonstrate that the design will preserve the existing natural character of the landscape by incorporating regulated trees unless they meet removal criteria. Removal criteria are addressed in the Environmental Criteria Manual.~~

~~(B)(G) For an application that proposes potential impacts or removal to a regulated tree, the City Arborist must review the application and make a compliance determination before the application may be administratively approved:~~

- ~~(1) Exception: If a tree has sustained substantial damage by natural causes and is an imminent hazard to life or property, a person may remove this tree prior to submitting an application obtaining a permit. The City Arborist shall establish rules for submitting applications under this exception.~~

~~(C) If a regulated tree is permitted for removal, the City Arborist may require mitigation, including the planting of replacement trees, as a condition of approval. Mitigation approaches are listed in the Environmental Criteria Manual. Mitigation shall be wholly satisfied on the proposed development prior to release by the Director.~~

~~(D)(H) Eligibility for submitting application:~~

- ~~(1) For a regulated tree located on public property or a public street or easement, an application may be filed by:~~
  - ~~(a) A City department, public utility, or political subdivision with the authority to install utility lines or other public facilities in or above the property, street, or easement.~~
- ~~(2) For a regulated tree located on private property, an application may be filed by:~~
  - ~~(a) the owner of the property, on which the tree is located; or~~



~~(b) the City, if the tree is fatally diseased, dead, or an imminent hazard and is a high risk to the public.~~

~~(E) An application fee is not required if the application is for removal under Section 23-3C-2020(D)(3), (4), or (5) (Review Criteria for Permitting Removal of Regulated Trees).~~

**23-3 G-2020 — Keystone Tree Review Criteria For Permitting Removal Of Regulated Trees**

- ~~(A) Regulated trees are to be preserved unless review criteria are met for removal.~~
- ~~(B)(A) Young public (2 inch dbh - 7.9 inch dbh) and public keystone trees (8 inch dbh - 18.9 inch dbh) are to be protected and may only be removed after staffthe City Arborist determines:~~
  - ~~(1) All unnecessary and avoidable grading, parking, utility assignments, landscape island configuration, access routes, etc. and internal circulation routes will be assessed to ensure unnecessary removals are not permitted.~~
  - ~~(2) Meets Subsection (D)(3),(4), (5), or (6).~~
- ~~(C) Private keystone trees are to be protected to the extent feasible.~~
  - ~~(1) All unnecessary and avoidable grading, parking, utility assignments, landscape island configuration, access routes, etc. and internal circulation routes will be assessed to ensure unnecessary removals are not permitted. Changes to building layout or the number of units will not be required to demonstrate compliance.~~
  - ~~(2) Removal permitted if request meets 23-3C-2020 (1) (C), (D), or (E).~~
  - ~~(3) Preservation of private keystone trees on single-family developments shall be used development is incentivized, but not required. These trees may be counted to satisfy mitigation requirements ~~should~~~~
  - ~~(2) if protected or heritage trees be permitted for removal.~~
  - ~~(3) Meets Subsection (D)(3),(4), (5), or (6).~~
- ~~(D) For protected trees, the Development Services Department may approve an application to remove a protected tree only after determining that the tree:~~
  - ~~(1) prevents a reasonable access to the property;~~
  - ~~(2) prevents a reasonable use Review of the property;~~
  - ~~(3) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree;~~
  - ~~(4) this section is dead;~~
  - ~~(5) is fatally diseased; or~~
  - ~~(6) for a tree located on public property or a public street or easement:~~
    - ~~(a) prevents the opening of necessary vehicular traffic lanes in a street or alley;~~
    - ~~or~~
    - ~~prevents the during plan review to ensure these trees are accounted for prior to construction of utility or drainage facilities that may not feasibly be~~

**23-3 C-2020 Protected Tree Review Criteria**

- ~~(A) Protected trees shall be preserved unless the City Arborist determines the tree:~~
  - ~~(1) Prevents reasonable access to the property; or~~

(2) Prevents a reasonable use of the property; or

)

(3) Is an imminent hazard to life or property, and the hazard cannot

) reasonably be mitigated without removing the tree; or

(4) Is dead; or

)

(5) Is fatally diseased; or

)

(B) For a tree located on public property or a public street or easement:

)

(1) Prevents the opening of necessary vehicular traffic lanes in a street or

) alley; or

(2) Prevents the construction of utility or drainage facilities that may not

) feasibly be

~~(b)~~ rerouted and reasonable alternative construction methods have been exhausted.

~~(E)~~(C) If an application filed by a political subdivision of the state is approved under Subsection ~~(D)~~(A)(2), the Land Use Commission may, in its discretion, review the approval.

(D) For an application to remove a protected tree, any reasonable variances, waivers, exemption, or modifications ~~shall~~may be pursued per the City Arborist.

~~(F)~~

- (1) The application to remove the protected tree may not be approved unless the request per this Subsection is denied.
- (2) This Subsection does not apply to an application that may be approved under Subsection ~~(DA)~~(3), (4), or (5).

~~(G) Alternative development plans demonstrating due~~Due diligence exploring options to preserve regulated and remove protected trees must shall be submitted provided to the City Arborist for to review to assess meeting criteria in Subsection  
~~(D)(1), (2), (6)(a) and (b).~~

---

**~~23-3~~ ~~C-2030~~ Action On Application**

- ~~(A) The City Arborist shall take action on an application to remove a regulated tree:~~
- ~~(1) not later than the 15th working day after the complete application is filed;~~
  - ~~(2) if associated with development activities that have prescribed timelines then deference is given to those timelines; or~~
- ~~(3)(E) if a variance, waiver, exemption, modification, or alternative compliance request is required by Section 23-3C-2020 (Review Criteria for Permitting Removal of Regulated Trees), not later than the 10th working day after the request is denied: (A)(1) or (2).~~

---

**~~23-4~~ ~~C-2040~~ Effective Date And Expiration Of Approval**

- ~~(A) Approval of an application to remove a regulated tree is effective immediately unless associated with development plans. If associated with development plans, removal is effective after development plan approval and required preconstruction meetings have occurred.~~
- ~~(B)(C) An approval to remove a regulated tree expires:~~
- ~~(1) one year after its effective date if the permit is not associated with development; or~~
  - ~~(2) if associated with a development when the development plan expires.~~

---

**~~23-3C-2050~~****23-3 C-2030 Appeal**

- ~~(A) An applicant may appeal the denial of an application a request to remove a regulated protected tree to the Land Use Commission.~~

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(B) Prior to the Land Use Commission hearing, the Environmental Commission shall hear the appeal request and may make a recommendation to the Land Use Commission.

## Division 23-3C-3: Heritage Trees

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### 23-3 C-3010 Removal Prohibited

For an application that proposes the removal of a heritage tree, the applicant must file a request for a variance to remove the heritage tree under this Division before the application may be administratively approved or presented to the Land Use Commission.

- (A) Removal of a heritage tree is prohibited unless the City Arborist has issued a permit for the removal under this Division.
- (B) A permit to remove a heritage tree may be issued only if a waiver or variance is approved under Section 23-3C-3020 (Administrative ~~Variance~~Waiver) or 23-3C-~~3030~~3040 (Land Use Commission Variance).
- (C) The requirements in this Division apply to trees on private and public property. To the extent of conflict with another Section of the City Code, this Division applies.
- ~~(D) A person may, without a variance, remove a damaged heritage tree that is an imminent hazard to life or property if the tree is removed within seven days of being damaged. The Director may extend this deadline for widespread and extensive storm damage. See the Environmental Criteria Manual for submittal requirements.~~

### 23-3 C-3020 Administrative ~~Variance~~Waiver

- (A) The City Arborist may grant a variance/waiver from Section 23-3C-3010 (Removal Prohibited) to allow removal of a heritage tree only after determining that the heritage tree:



~~(1) is dead;~~

~~(2) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; or~~

~~(3) is diseased and:~~

~~(a) restoration to sound condition is not practicable; or~~

~~(b) the disease may be transmitted to other trees and endanger their health.~~

~~(B) No application fee and no mitigation are required for a variance request under Subsection (A).~~

~~(1) Meets the criteria in 23-3C-2020 (A)(3), (4), or (5).~~

~~(C)(B)~~ The Director ~~of the Development Services Department~~ may grant a variance/waiver from Section 23-3C-3010 (Removal Prohibited) to allow removal of a heritage tree that does not have at least one stem that is 30 inches in diameter/dbh or larger (measured per the ECM) only after determining, based on the City Arborist's recommendation, that the heritage tree meets the criteria in Section 23-3C-2020 (Review Criteria for Permitting Removal of Regulated Trees) and that:

(1) ~~the~~The applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 23-3C-3060 (Variance Prerequisite); and

~~(2) removal~~Removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree-

~~(2)~~ will result in a design that will allow for the maximum provision of ecological service, historic, and cultural value of the trees on the site.

~~(D)(C)~~ A ~~variance~~waiver granted under this Section:

- (1) ~~shall~~Shall be the minimum change necessary;
- (2) ~~shall~~Shall require mitigation as a condition of variance approval for variances requested under Subsection (C) of this Section; and
- (3) ~~may~~May not be issued until the applicant has satisfied the mitigation conditions required under this Subsection (D)(2) or posted fiscal security adequate to ensure performance of the mitigation conditions not later than one year after issuance of the variance.

~~(E)(D)~~ The Director ~~of the Development Services Department~~ shall prepare written findings to support the grant or denial of a variance request under Subsection (C) of this Section.

---

### 23-3      C-3030      Appeal

(A) An applicant may appeal denial of an administrative waiver under Section 23-3C-3020 (Administrative Waiver) to the Land Use Commission.

(B) Prior to the Land Use Commission hearing, the Environmental Commission shall make a recommendation on the appeal to the Land Use Commission.

---

### 23-3      C-3040      Land Use Commission Variance

(A) The Land Use Commission may grant a variance from Section 23-3C-3010 (Removal Prohibited) to allow removal of a heritage tree that has at least one stem that is 30 inches or larger in ~~diameter~~dbh (measured per ECM) after determining, based on the City Arborist's recommendation, that the heritage tree meets the criteria in Section 23-3C-2020 (Review Criteria for Permitting Removal of Regulated Trees), and ~~that~~:

- (1) As determined by the City Arborist, the applicant has applied for and been denied ~~a~~reasonable variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 23-3C-3060 (Variance Prerequisite); and
- (2) ~~removal~~Removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree will result in a design that will allow for the maximum provision of ecological service, historic, and cultural value of the trees on the site, and

~~(B) A variance granted under this Section:~~

~~(1)(3)~~ shallShall be the minimum change necessary; and

~~(2)(4)~~ shallShall require mitigation as a condition of variance approval ~~for~~ variances requested; and

~~(5) Consideration~~ May not be issued until the applicant has satisfied the mitigation conditions or posted fiscal surety adequate to ensure performance of ~~at the~~ mitigation conditions not later than one year after issuance of the variance under this Section requires consideration by the

~~(C) The~~ Environmental Commission.

---

~~23-3~~ ~~C-3040~~ **Appeal**

~~(A)(B) An applicant shall hear the variance request and~~ may appeal denial of an administrative variance under Section 23-3C-3020 ~~(Administrative Variance)~~ make a recommendation to the Land Use Commission.

~~(B) An appeal under this Section requires review by the Environmental Commission.~~

---

### 23-3 C-3050 Application for Variance

- (A) For a heritage tree located on public property or a public street or easement, an application requesting a variance to allow removal of the heritage tree may be filed by: \_
- (1) ~~a~~A City department, public utility, or political subdivision with the authority to install utility lines or other public facilities in or above the property, street, or easement; or
  - (2) ~~the~~The owner of property adjoining the site of the tree.
- (B) For a heritage tree located on private property, an application requesting a variance to allow removal of the heritage tree may be filed by: \_
- (1) ~~the owner of the~~The ~~property~~ owner or agent, on which the tree is located; or
  - (2) ~~the city arborist~~The City Arborist, if the tree is fatally diseased or is ~~a safety~~an imminent hazard.
- (C) An application requesting a variance to allow removal of a heritage tree must:
- (1) ~~be~~Be filed with the ~~Director~~director of the ~~Development Services Department~~managing department;
  - (2) ~~include~~Include the fee prescribed by ordinance; and
  - (3) ~~include~~Include the information prescribed by the Environmental Criteria Manual.
- ~~(D) The application fee is not required if the application is based solely on the criteria in Section 23-3C-2020(D)(3), (4), or (5) (Review Criteria for Permitting Removal of Regulated Trees).~~

### 23-3 C-3060 Variance Prerequisite

- (A) If a variance, waiver, exemption, modification, or alternative compliance from another City Code provision would eliminate the need for a variance from Section 23-3C-3010 (Removal Prohibited), before requesting a variance to allow removal of a heritage tree on private property the applicant ~~must~~shall:
- (1) ~~request~~Request a variance, waiver, exemption, modification, or alternative compliance from the Code provisions that would eliminate the need to remove the heritage tree; and
  - (2) ~~obtain~~Obtain a grant or denial of the variance, waiver, exemption, modification, or alternative compliance that would eliminate the need to remove the heritage tree.

- ~~(B)~~ The request for a variance to allow removal of a heritage tree may not be considered unless the variance, waiver, exemption, modification or alternative compliance from other City Code provisions is denied.
- ~~(C)~~ The application fee for a variance from another City Code provision required under this Section is waived.
- ~~(D)~~(B) This Section does not apply to an application for a variance to remove a ~~heritage tree~~Heritage Tree based on the criteria in Section 23-3C-2020(~~DA~~)(3), (4), or (5) (Protected Tree Review Criteria ~~for Permitting Removal of Regulated Trees~~).
- ~~(E)~~ The body considering the variance, waiver, exemption, modification, or alternative compliance will consider the community benefit of preserving the heritage tree in determining whether to grant or deny the request for a variance, waiver, exemption, modification or alternative compliance from another City Code provision.
- ~~(F)~~(C) This Section does not require an applicant to request a variance, waiver, exemption, modification, or alternative compliance if the ~~Director~~director determines that to do so would endanger the public health and safety.

---

### ~~23-3~~ C-3070 ~~Action on Application~~

- ~~(A)~~ The Director of the Development Services Department shall take action on a variance request to allow removal of a heritage tree:
- ~~(1)~~ not later than the 15th working day after the complete application is filed;
  - ~~(2)~~ if associated with development activities that have prescribed timelines then deference is given to those timelines; or
  - ~~(3)~~ if a variance, waiver, exemption, modification, or alternative compliance from another City Code provision is required under Section 23-3C-3060 (Variance Prerequisite), not later than the 10th working day after the request is denied.
- ~~(B)~~ If the application is based on a damaged heritage tree constituting an immediate hazard to life or property, the application shall be approved or denied within 24 hours and no application fee is required.

---

### ~~23-3~~ C-3080 ~~Variance Effective Date and Expiration~~

- (A) Approval of a variance request to allow removal of a heritage tree is effective immediately upon issuance of the associated development permit.
- ~~(B)~~ A variance to allow removal of a heritage tree expires:
- ~~(1)~~ one year after its effective date, provided that the mitigation conditions in the variance remain in effect until the conditions are met; or
  - ~~(2)~~(B) for an application that is associated accordance with a pending development plan submitted to the City, when the development permit expires23-2F-1070.

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# Article 23-3D: ~~Water Quality~~

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# Division 23-3D-1: General Provisions

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## 23-3D-1010 Intent

The Austin Comprehensive Plan calls for the protection and improvement of the water quality of the city's creeks, lakes, and aquifers for community use and support of aquatic life. Austin's watersheds are the lands that contribute to and sustain our creeks and lakes. Development anywhere within a watershed can have an impact on the water that flows through it and, consequently, the body of water into which it flows. As a result, the protection of these watersheds is critical to the health of the waterways. Water quality degradation primarily stems from urbanization and changing land use conditions that modify watershed hydrology, disrupt aquatic habitat, and increase the level of pollutants in waterways. The physical variability of the region makes some watersheds more vulnerable than others to water pollution, such as those comprising the northern and southern Edwards Aquifer, as well as Lake Austin, one of the principal sources of Austin's drinking water. Streams in the eastern watersheds are more vulnerable to erosion because creek channels cut through deep clay soils instead of bedrock.

Water quality protection is achieved through a combination of regulations, including: setbacks that preserve and restore the natural function of waterways and floodplains; protection of sensitive environmental features like caves, wetlands, springs, and steep slopes; limits on impervious cover to protect natural function and infiltration; limits on grading to minimize site disturbance and maintain natural hydrology; and stormwater control measures that slow down, filter, and beneficially use polluted runoff.

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## 23-3 D-1020 Applicability ~~Of~~ Article

- (A) Except as provided in Subsection (B), this Article applies in the planning jurisdiction.
- (B) For a preliminary plan, final plat, or subdivision construction plan in the portion of the City's extraterritorial jurisdiction that is within Travis County:
  - (1) ~~this~~This Article does not apply; and

- (2) Title 30 (Austin/Travis County Subdivision Regulations) governs.
- (C) ~~The Development by the City of Austin is not exempt from the~~ standards of this Article ~~apply to land development by the City.~~





**23-3 D-1030 Descriptions of Regulated Areas**

- (A) This Section describes the watersheds, aquifers, and water zones that are regulated by this Article. A map of these areas is maintained by the Watershed Protection Department and available for inspection at the offices of the Development Services Department.
- (B) The Watershed Protection Department shall determine the boundaries of the areas described in Subsection (D).
- (C) ~~For property within 1,500 feet of a boundary, the director~~The director of the Watershed Protection Department may require an applicant to verify the boundary of an area described in Subsection (D). For property within 1,500 feet of an Edwards Aquifer recharge zone boundary, the director of the Watershed Protection Department may require that an applicant provide a certified report from a geologist or hydrologist verifying the boundary location.
- (D) In this Article:
  - (1) BARTON SPRINGS ZONE means the Barton Creek watershed and all watersheds that contribute recharge to Barton Springs, including those portions of the Williamson, Slaughter, Onion, Bear, and Little Bear Creek watersheds located in the Edwards Aquifer recharge or contributing zones.
  - (2) BARTON CREEK WATERSHED means the land area that drains to Barton Creek, including Little Barton Creek watershed.
  - (3) EDWARDS AQUIFER is the water-bearing substrata that includes the stratigraphic rock units known as the Edwards Group and Georgetown Formation.
  - (4) EDWARDS AQUIFER CONTRIBUTING ZONE means all land generally to the west and upstream of the Edwards Aquifer recharge zone that provides drainage into the Edwards Aquifer recharge zone.
  - (5) EDWARDS AQUIFER RECHARGE ZONE means all land over the Edwards Aquifer that recharges the aquifer, as determined by the surface exposure of the geologic units comprising the Edwards Aquifer, including the areas overlain with quaternary terrace deposits.
  - (6) SOUTH EDWARDS AQUIFER RECHARGE ZONE means the portion of the Edwards Aquifer recharge zone that is located south of the Colorado River and north of the Blanco River.
  - (7) SUBURBAN WATERSHEDS include all watersheds not otherwise classified as urban, water supply suburban, or water supply rural watersheds, and include:
    - (a) ~~the~~The Brushy, Buttercup, Carson, Cedar, Cottonmouth, Country Club East, Country Club West, Decker, Dry Creek East, Elm Creek, Elm Creek South, Gilleland, Harris Branch, Lake, Lockwood, Maha, Marble, North Fork Dry, Plum, Rattan, Rinard, South Boggy, South Fork Dry, South Brushy, Walnut, and Wilbarger Creek watersheds;
    - (b) ~~the~~The Colorado River watershed downstream of U.S. 183; and
    - (c) ~~those~~Those portions of the Onion, Bear, Little Bear, Slaughter, and Williamson creek watersheds not located in the Edwards Aquifer recharge or contributing zones.
  - (8) URBAN WATERSHEDS include:
    - (a) ~~the~~The Blunn, Buttermilk, Boggy, East Bouldin, Fort, Harper's Branch, Johnson, Little Walnut, Shoal, Tannehill, Waller, and West Bouldin Creek watersheds;

~~(b) the north side of the Colorado River watershed from Johnson Creek to U.S. 183; and~~

~~(b) The~~ The north side of the Colorado River watershed from Johnson Creek to U.S. 183; and

(c) ~~The~~ south side of the Colorado River watershed from Barton Creek to U.S. 183.

(9) WATER SUPPLY RURAL WATERSHEDS include:

(a) ~~The~~ Lake Travis watershed;

(b) ~~The~~ Lake Austin watershed, excluding the Bull Creek watershed and the area to the south of Bull Creek and the east of Lake Austin; and

(c) ~~The~~ Bear West, Bee, Bohl's Hollow, Cedar Hollow, Coldwater, Commons Ford, Connors, Cuernavaca, Harrison Hollow, Hog Pen, Honey, Little Bee, Panther Hollow, Running Deer, St. Stephens, Steiner, and Turkey Creek watersheds.

(10) WATER SUPPLY SUBURBAN WATERSHEDS include:

(a) ~~The~~ Bull, Eanes, Dry Creek North, Huck's Slough, Taylor Slough North, Taylor Slough South, and West Bull Creek watersheds;

(b) ~~The~~ Lady Bird Lake watershed on the south side of Lady Bird Lake from Barton Creek to Tom Miller Dam;

(c) ~~The~~ Lady Bird Lake watershed on the north side of Lady Bird Lake from Johnson Creek to Tom Miller Dam; and

(d) ~~The~~ Lake Austin watershed on the east side of Lake Austin from Tom Miller Dam to Bull Creek.

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### 23-3D-1040 Engineer's Certification

An engineer shall certify a plan or plat as complete, accurate, and in compliance with the standards of this Article. The director may waive this standard after making a determination that the plan or plat includes only minor alterations or improvements that do not require the services of an engineer.



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## 23-3 D-2010 Special Exceptions; Limited Adjustment

- (A) Except as prohibited by Division 23-3D-9 (Save Our Springs Initiative), a special exception from the standards of this Article may be granted in compliance with Chapter 23-2 (Administration And Procedures).
- (B) If a three-quarters majority of the Council concludes, or a court of competent jurisdiction renders a final judgment concluding that identified sections of this Article, as applied\_ to a specific development or proposal violate the United States Constitution or the Texas Constitution or are inconsistent with federal or state statutes that may preempt a municipal ordinance or the Austin City Charter, the Council may, after a public hearing, adjust the application of this Article to that development to the minimum extent required to comply with the conflicting law. Any adjustment must be structured to provide the maximum protection of water quality.

## 23-3 D-2020 Condemnation ~~And~~ Accessibility Exceptions

- (A) This Subsection applies to property that has existing development or that is included in an approved site plan if the development on the property is reconfigured

as a result of right- of-way condemnation.

- (1) The accountable official may approve the replacement of development that existed in the condemned area of the property onto the remainder of the property.
- (2) For development that may be replaced in compliance with Subsection (A)(1), the director may vary the standards of this Article for development in the water quality transition zone and the critical water quality zone and the limitations of this Article on impervious cover after making a determination that the replacement development will not increase the pollutant loading.



~~(B)~~ For property that had existing development or that was included in a released site plan\_ on March 10, 1996, the accountable official may approve additional development that exceeds the impervious cover limitations of this Title if the director determines that the

(B) increased impervious cover is necessary to comply with the accessibility standards of the Americans With Disabilities Act or the Uniform Building Code.

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### 23-3 D-2030 Redevelopment Exception ~~In~~ In Urban ~~And~~ And Suburban Watersheds

- (A) This Section applies to property located in an urban or suburban watershed that has existing development if:
- (1) ~~no~~No unpermitted development occurred on the site after January 1, 1992; and
  - (2) ~~the~~The applicant files a site plan application and an election for the property to be governed by this Section.

(B) The standards of this Article do not apply to the ~~redevelopment-subdivision of the property if~~ at the time of redevelopment under this section subdivision and site plan applications are filed concurrently.

~~(B)~~(C) The standards of this Article do not apply to the redevelopment- ~~of the property if the redevelopment:~~

- (1) ~~does~~Does not increase the existing amount of impervious cover;
- (2) ~~provides~~Provides the level of water quality treatment prescribed by current standards for the redeveloped area or an equivalent area on the site;
- (3) ~~does~~Does not generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property;
- (4) ~~is~~Is consistent with the neighborhood plan adopted by Council, if any;
- (5) ~~does~~Does not increase non-compliance, if any, with Section 23-3D-4040 (Critical Water Quality Zone Development), Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), Section 23-3D-5030 (Critical Environmental Features), or Section 23-3D-5040 (Wetland Protection); and
- (6) ~~does~~Does not place redevelopment within the Erosion Hazard Zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.

~~(C)~~(D) The redevelopment must comply with Section 23-3D-5010 (Environmental Resource Inventory) and all construction phase environmental standards in effect at the time of construction, including Division 23-3D-7 (Erosion and Sedimentation Control).

---

### 23-3 D-2040 Redevelopment Exception ~~In~~ In ~~The~~ The Barton Springs Zone

- (A) This Section applies to property located in the Barton Springs Zone that has existing commercial, civic, or industrial development if:
- (1) ~~no~~No unpermitted development occurred on the site after January 1, 1992; and
  - (2) ~~the~~The applicant files a site plan application and an election for the property to be governed by this Section.



(B) For property governed by this Section, this Section supersedes Division 23-3D-9 (Save Our Springs Initiative), to the extent of conflict.

(C) In this Section:

~~(1)~~ SEDIMENTATION/FILTRATION POND means water quality controls that comply with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards) or are

- (1) approved in compliance with Section 23-3D-6110 (Innovative Management Practices); and
- (2) SOS POND means water quality controls that comply with all standards of Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards) and the pollutant removal standards of Section 23-3D-9040(A) (Pollution Prevention Required).
- (D) The standards of this Article do not apply to the subdivision of property if at the time of redevelopment in compliance with this Section subdivision and site plan applications are filed concurrently. \_
- (E) The standards of this Article do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:

  - (1) The redevelopment may not increase the existing amount of impervious cover on the site.
  - (2) The redevelopment may not increase non-compliance, if any, with Section 23-3D- 4040 (Critical Water Quality Zone Development), Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), Section 23-3D-4060 (Water Quality Transition Zone Development), Section 23-3D-5030 (Critical Environmental Features), or Section 23-3D-5040 (Wetland Protection).
  - (3) The redevelopment must comply with Section 23-3D-5010 (Environmental Resource Inventory) and all construction phase environmental standards –in effect at the time of construction, including Division 23-3D-7 (Erosion and Sedimentation Control) and Section 23-3D-6100 (Fiscal Security in the Barton Springs Zone).
  - (4) The water quality controls on the redevelopment site must provide a level of water quality treatment that is equal to or greater than that which was previously provided.
  - (5) For a commercial, civic, industrial, or multi-family redevelopment, the owner or operator shall obtain a permit in compliance with Section 23-3D-6090 (Barton Springs Zone Operating Permit) for both sedimentation/filtration ponds and SOS ponds. \_
  - (6) For a site with more than 40 percent net site area impervious cover, the redevelopment must have:

    - (a) ~~sedimentation~~Sedimentation/filtration ponds for the entire site; or
    - (b) SOS ponds for a portion of the site, and sedimentation/filtration ponds for the remainder of the redeveloped site.
  - (7) For a site with 40 percent or less net site area impervious cover, the redevelopment must have SOS ponds for the entire site.
  - (8) The applicant shall mitigate the effects of the redevelopment, if required by and in compliance with Subsection (H). \_
  - (9) Redevelopment may not be located within the Erosion Hazard Zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.

~~(9)~~

- (F) Council approval of a redevelopment in compliance with Subsection (G) is required if the redevelopment:
- (1) ~~includes~~Includes more than 25 dwelling units;
  - (2) ~~is~~is located outside the City's zoning jurisdiction;
  - (3) ~~is~~is proposed on property with an existing industrial or civic use;

(4) ~~is~~ inconsistent with a neighborhood plan; or

~~(5)(1) will generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.~~

~~(G)(B) Council shall consider the following factors in determining whether to approve a proposed redevelopment:~~

~~(1)(5) Will generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.~~

~~(B)(G) Council shall consider the following factors in determining whether to approve a proposed redevelopment:~~

- (1) ~~benefits~~Benefits of the redevelopment to the community;
- (2) ~~whether~~Whether the proposed mitigation or manner of development offsets the potential environmental impact of the redevelopment;
- (3) ~~the~~The effects of ~~offsite~~off-site infrastructure requirements of the redevelopment; and
- (4) ~~compatibility~~Compatibility with the City's ~~long-range planning goals~~comprehensive plan.

~~(H)~~ (H) Redevelopment of property in compliance with this Section requires the purchase or restriction of mitigation land if the site has a sedimentation/filtration pond.

(1) The combined gross site area impervious cover of the mitigation land and the portion of the redevelopment site treated by sedimentation/filtration ponds may not exceed 20 percent.

(2) The mitigation standard may be satisfied by:

- (a) ~~paying~~Paying into the Barton Springs Zone Mitigation Fund a non-refundable amount established by ordinance;
- (b) ~~transferring~~Transferring to the City in compliance with Paragraph (3) mitigation land approved by the Watershed Protection Department within a watershed that contributes recharge to Barton Springs, either inside or outside the City's jurisdiction;
- (c) ~~placing~~Placing restrictions in compliance with Paragraph (3) on mitigation land approved by the Watershed Protection Department within a watershed that contributes recharge to Barton Springs, either inside or outside the City's jurisdiction; or
- (d) ~~a~~A combination of the mitigation methods described in Subparagraphs (a) - (c), if approved by the Watershed Protection Department.

(3) An applicant redeveloping in compliance with this Section shall pay all costs of restricting the mitigation land or transferring the mitigation land to the City, including the costs of:

- (a) ~~an~~An environmental site assessment without any recommendations for further clean-up, certified to the City not earlier than the 120th day before the closing date transferring land to the City;
- (b) ~~a~~A category 1(a) land title survey, certified to the City and the title company not earlier than the 120th day before the closing date transferring land to the City;

a

- (c) ~~A~~ title commitment with copies of all Schedule B and C documents, and an owner's title policy;
- (d) ~~a~~ fee simple deed, or, for a restriction, a restrictive covenant approved as to form by the City Attorney;
- (e) ~~taxes~~Taxes prorated to the closing date; (f) ~~recording~~Recording fees; and
- (g) ~~charges~~Charges or fees collected by the title company.



- ~~(+)~~ (1) The Watershed Protection Department shall adopt rules to identify criteria for director approval in compliance with this Section to ensure that the proposed mitigation, manner of development, and water quality controls offset the potential environmental impact of the redevelopment.

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**D-2050 Redevelopment Exception ~~In The~~in the Water Supply Rural ~~And~~and Water Supply Suburban Watersheds**

- (A) This Section applies to property located in a water supply rural or water supply suburban watershed that has existing commercial, civic, or industrial development or existing residential development with greater than two dwelling units per lot if:
  - (1) ~~no~~No unpermitted development occurred on the site after January 1, 1992; and
  - (2) ~~the~~The applicant files a site plan application and an election for the property to be governed by this Section.
- (B) In this Section, SEDIMENTATION/ FILTRATION POND means water quality controls that comply with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards) or are approved in compliance with Section 23-3D-6110 (Innovative Management Practices).
- (C) The standards of this Article do not apply to the subdivision of property if at the time of redevelopment in compliance with this Section subdivision and site plan applications are filed concurrently.
- (D) The standards of this Article do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:
  - (1) The redevelopment may not increase the existing amount of impervious cover on the site.
  - (2) The redevelopment may not increase non-compliance, if any, with Section 23-3D-4040 (Critical Water Quality Zone Development), Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), Section 23-3D-4060 (Water Quality Transition Zone Development), Section 23-3D-5030 (Critical Environmental Features), or Section 23-3D-5040 (Wetland Protection).
  - (3) The redevelopment must comply with Section 23-3D-5010 (Environmental Resource Inventory) and all construction phase environmental standards in effect at the time of construction, including Division 23-3D-7 (Erosion and Sedimentation Control).
  - (4) The water quality controls for the redeveloped areas or an equivalent area on the site must provide a level of water quality treatment that is equal to or greater than that which was previously provided. At a minimum, the site must provide sedimentation/ filtration ponds for the redeveloped area or an equivalent area on the site.

~~(4)~~

- (5) The applicant shall mitigate the effects of the redevelopment, if required by and in compliance with Subsection (G).
  - (6) Redevelopment may not be located within the Erosion Hazard Zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.
- (E) Council approval of a redevelopment in compliance with Subsection (F) is required if the redevelopment:
- (1) ~~includes~~Includes more than 25 additional dwelling units;

- (2) ~~is~~ located outside the City's zoning jurisdiction;
- (3) ~~is~~ proposed on property with an existing industrial use;
- (4) ~~is~~ inconsistent with a neighborhood plan; or

~~(4)(5)~~ Will generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.

~~(J)(F)~~ Council shall consider the following factors in determining whether to approve a proposed redevelopment:

- (5) ~~will~~ Benefits generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.

~~(F)(H)~~ Council shall consider the following factors in determining whether to approve a proposed redevelopment:

- (1) ~~benefits~~ of the redevelopment to the community;
- (2) ~~whether~~ Whether the proposed mitigation or manner of development offsets the potential environmental impact of the redevelopment;
- (3) ~~the~~ The effects of off-site infrastructure requirements of the redevelopment; and
- (4) ~~compatibility~~ Compatibility with the City's ~~long-range planning goals~~ comprehensive plan.

(G) Redevelopment of property in compliance with this Section requires the purchase or restriction of mitigation land.

- (1) The combined ~~gross site area~~ impervious cover of the mitigation land and the portion of the redevelopment treated by sedimentation/filtration ponds may not exceed 20 percent of gross site area if in a water supply rural watershed or 40 percent of gross site area if in a water supply suburban watershed. ~~20 percent if in a water supply rural watershed or 40 percent if in a water supply suburban watershed.~~
- (2) The mitigation standard may be satisfied by:
  - (a) ~~paying~~ Paying into the Water Supply Mitigation Fund a nonrefundable amount established by ordinance;
  - (b) ~~transferring~~ Transferring to the City in compliance with Paragraph (3) mitigation land approved by the Watershed Protection Department within a water supply rural or water supply suburban watershed, either inside or outside the City's jurisdiction;
  - (c) ~~placing~~ Placing restrictions in compliance with Paragraph (3) on mitigation land approved by the Watershed Protection Department within a water supply rural or water supply suburban watershed, either inside or outside the City's jurisdiction; or
  - (d) ~~a~~ A combination of the mitigation methods described in Subparagraphs (a) - (c), if approved by the Watershed Protection Department.
- (3) An applicant redeveloping in compliance with this Section shall pay all costs of restricting the mitigation land or transferring the mitigation land to the City, including the costs of:

an



- (a) ~~An~~ environmental site assessment without any recommendations for further clean-up, certified to the City not earlier than the 120th day before the closing date transferring land to the City;
- (b) ~~aA~~ category 1(a) land title survey, certified to the City and the title company not earlier than the 120th day before the closing date transferring land to the City;
- (c) ~~aA~~ title commitment with copies of all Schedule B and C documents, and an owner's title policy;
- (d) ~~aA~~ fee simple deed, or, for a restriction, a restrictive covenant approved as to form by the City Attorney;

- (e) ~~taxes~~Taxes prorated to the closing date; (f) ~~recording~~Recording fees; and
  - (g) ~~charges~~Charges or fees collected by the title company.
- ~~(H)~~ (H) The Watershed Protection Department shall adopt rules to identify criteria for director approval in compliance with this Section to ensure that the proposed mitigation, manner of development, and water quality controls offset the potential environmental impact of the redevelopment.

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### 23-3 D-2060 Land Use Commission Variances

- (A) It is the applicant's burden to establish that the findings described in this Section have been met. Except as provided in Subsections (B) and (C), the Land Use Commission may grant a variance from a standard of this Article after determining that:
- (1) ~~the~~The standard will deprive the applicant of a privilege ~~or the safety of property given available~~ to owners of other similarly situated property with approximately contemporaneous development subject to similar code requirements;
  - (2) ~~the~~The variance:
    - (a) ~~is~~is not ~~based on a condition caused~~necessitated by the scale, layout, construction method chosen, or other design decision made by the applicant to develop the property, unless the ~~development method~~design decision provides greater overall environmental protection than is achievable without the ~~variance~~;
    - (b) ~~is~~is the minimum ~~change~~deviation from the code standard necessary to ~~avoid the deprivation of a privilege given to other property owners and to~~ allow a reasonable use of the property; and
    - (c) ~~does~~Does not create a significant probability of harmful environmental consequences; and
  - (3) ~~development~~Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.
- (B) The Land Use Commission may grant a variance from a standard of Section 23-3D-4040 (Critical Water Quality Zone Development), Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), Section 23-3D-4060 (Water Quality Transition Zone Development), or Section 23-3D-8120 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long), after determining that:
- (1) ~~the~~The criteria for granting a variance in Subsection (A) are met;

the

- (2) ~~The~~ standard for which a variance is requested prevents a reasonable, economic use of the entire property; and
- (3) ~~the~~~~The~~ variance is the minimum ~~change~~~~deviation from the code standard~~ necessary to allow a reasonable, economic use of the entire property.
- (C) The Land Use Commission may not grant a variance from a standard of Division 23-3D-9 (Save Our Springs Initiative).
- (D) The Land Use Commission shall prepare written findings of fact to support the grant or denial of a variance request in compliance with this Section.

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**23-3 D-2070 Administrative Variances**

- (A) A variance in compliance with this Section may not vary the standards of Division 23-3D- 9 (Save Our Springs Initiative) and may not be granted for development of a property if any portion of the property abuts or is within 500 feet of the shoreline of Lake Austin, measured horizontally.
- (B) The Watershed Protection Department may grant a variance from a standard of:
- (1) Section 23-3D-4040 (Critical Water Quality Zone Development), only if:
    - (a) ~~necessary~~**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 in the Environmental Criteria Manual; \_
    - (b) ~~necessary~~**Necessary** to allow an athletic field in existence on October 28, 2013, to be maintained, improved, or replaced;
    - (c) ~~necessary~~**Necessary** to allow an athletic field to be located in an area not otherwise allowed in compliance with Section 23-3D-4040(B)(7); or
    - (d) ~~necessary~~**Necessary** to allow a hard surfaced trail to be located in an area not otherwise allowed in compliance with Section ~~23-3D-4040(B)(5)~~**(Critical Water Quality Zone Development)**;
  - (2) Section 23-3D-4040 (Critical Water Quality Zone Development), for development within an urban watershed, only if the proposed development:
    - (a) ~~is~~**Is** located not less than 25 feet from the centerline of a waterway;
    - (b) ~~is~~**Is** located outside the erosion hazard zone, unless protective works are provided as prescribed in the Drainage Criteria Manual;
    - (c) ~~does~~**Does** not increase non-compliance, if any, with Section 23-3D-4040 (Critical Water Quality Zone Development), Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), Section 23-3D-5030 (Critical Environmental Features), or Section 23-3D-5040 (Wetland Protection); and
    - (d) ~~restores~~**Restores** native vegetation and soils if development is removed from the critical water quality zone;
  - (3) Subsection 23-3D-4050(A)(3) (Critical Water Quality Zone Street, Driveway, and Trail Crossings), only outside the Barton Springs Zone;
  - (4) Section 23-3D-5030 (Critical Environmental Features);
  - (5) Section 23-3D-8020 (Interbasin Diversion);



- (6) Section 23-3D-8050 (Clearing for a Roadway);
  - (7) Section 23-3D-8060 (Cut Standards) or Section 23-3D-8070 (Fill Standards), for a ~~water quality control or detention facility and appurtenances for conveyance including but not limited to swales, drainage ditches, and diversion berms;~~ cut or fill of not more than eight feet in a suburban watershed and, for a public primary or secondary educational facility, within all watersheds; or
  - ~~(8) Section 23-3D-8060 (Cut Standards) or Section 23-3D-8070 (Fill Standards), for a cut or fill of not more than eight feet in the desired development zone; or~~
  - ~~(9)~~(8) Subsection 23-3D-8080(A) (Spoil Disposal).
- (C) It is the applicant's burden to establish that the findings described in this Section have been met

- (D) The Watershed Protection Department may grant a variance described in Subsection (B) only after determining that development in compliance with the variance meets the objective of the standard for which the variance is requested and:
- (1) ~~for~~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~~For a variance from Section 23-3D-4040(B)(7) (Critical Water Quality Zone Development), that the proposed work on or placement of the athletic field will have no adverse environmental impacts;
  - (3) ~~for~~For a variance from Section 23-3D-4050(A)(3) (Critical Water Quality Zone Street, Driveway, and Trail Crossings), that the design of the crossing will improve creek function or mitigate impacts to the creek as prescribed in the Environmental Criteria Manual;
  - (4) ~~for~~For a variance from Section 23-3D-5030, (Critical Environmental Features), that the proposed measures preserve all characteristics of the critical environmental feature;
  - (5) ~~for~~For a variance from Section 23-3D-8020, (Interbasin Diversion), there are no adverse environmental or drainage impacts;
  - (6) ~~for~~For a variance from Section 23-3D-8060 (Spoil Disposal) or Section 23-3D-8070 (Fill Standards) the cut or fill is not located on a slope with a gradient of more than 15 percent or within 100 feet of a classified waterway; and
  - (7) ~~for~~For a variance from Section 23-3D-8080(A) (Spoil Disposal), use of the spoil provides a necessary public benefit. Necessary public benefits include:
    - ~~(a) roadways;~~
    - (a) stormwater Roadways;
    - (b) Stormwater detention facilities;
    - (c) ~~public~~Public or private park sites; and
    - (d) ~~building~~Building sites that comply with Section 23-3D-8060 (Cut Standards), 23-3D-8070 (Fill Standards), and Article 23-10E (Drainage).
- (E) The Watershed Protection Department shall prepare written findings to support the grant or denial of a variance request in compliance with this Section.

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## 23-3D-2080 Summary ~~of~~ of Variances

The director shall prepare and maintain for public inspection a written summary of variances granted and denied in compliance with Sections 23-3D-2060 (Land Use Commission Variances) and 23-3D-2070 (Administrative Variances).



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# Division 23-3D-3: Impervious Cover

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## 23-3 D-3010 Applicability Of Impervious Cover Standards

- (A) The impervious cover standards of this Article do not restrict impervious cover on a single-family or ~~duplex~~two-family lot but apply to the subdivision as a whole.
- (B) For a subdivision with commercial, civic, industrial, or multi-family lots and an internal roadway, the impervious cover calculation for the platted lots will need to account for the roadway if the roadway exceeds the impervious cover limits within the right-of-way.
- (C) The impervious cover standards of this Article do not apply to an application for a roadway improvement ~~that will not exceed~~with less than 8,000 square feet of new impervious cover. For the purposes of this Section, roadway improvements are limited to intersection upgrades, low-water crossing upgrades, additions for

bicycle lanes, and additions for mass transit stops.

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### **23-3D-3020 Uplands Zones Established**

An uplands zone includes all land and waters not included in a critical water quality zone or a water quality transition zone.

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### **23-3 D-3030 Net Site Area**

- (A) Net site area includes only the portions of a site that lie in an uplands zone and have not been designated for wastewater irrigation.
- (B) For land described in Subsection (A), net site area is the aggregate of:

(1) 100 percent of the land with a gradient of 15 percent or less;

- (2) 40 percent of the land with a gradient of more than 15 percent and not more than 25 percent; and
  - (3) 20 percent of the land with a gradient of more than 25 percent and not more than 35 percent.
- (C) Net site area does not apply in the urban and suburban watersheds.

## 23-3 D-3040 Impervious Cover Calculations

- (A) Impervious cover is calculated in compliance with this Section and the Environmental Criteria Manual.
- (B) Impervious cover calculations include:
  - (1) roads;
  - (2) driveways;
  - (3) parking areas;
  - (4) buildings;
  - (5) concrete;
  - (6) impermeable construction covering the natural land surface;
  - (7) for an uncovered wood deck that has drainage spaces between the deck boards and that is located over a pervious surface, 50 percent of the horizontal area of the deck; and
  - (8) the portion of a site used for the storage of scrap and metal salvage, including auto salvage.
- (C) Impervious cover calculations exclude:
  - (1) sidewalks in a public right-of-way or public easement;
  - (2) multi-use trails open to the public and located on public land or in a public easement;
  - (3) water quality controls, excluding subsurface water quality controls;
  - (4) detention basins, excluding subsurface detention basins;
  - ~~(5)~~ ground level rainwater harvesting cisterns, excluding subsurface cisterns;
  - ~~(5)(6)~~ \_\_\_\_\_ drainage swales and conveyances;
  - ~~(6)(7)~~ ponds, the water surface area of ground level pools, and fountains, and ponds;
  - ~~(7)(8)~~ \_\_\_\_\_ areas with gravel placed over pervious surfaces that are used only for landscaping or by pedestrians and are not constructed with compacted base;
  - ~~(8)(9)~~ \_\_\_\_\_ porous pavement designed in compliance with the Environmental Criteria Manual, limited to only pedestrian walkways and multi-use trails, and located outside the Edwards Aquifer recharge zone;
  - ~~(9)(10)~~ \_\_\_\_\_ fire lanes designed as prescribed in the Environmental Criteria Manual, that consist of interlocking pavers, and are restricted from routine vehicle access;





~~(10)~~(11)        an access ramp for an existing single-family and ~~duplex~~two-family residential unit if:

- (a) a person with a disability requires access to a dwelling entrance that meets the standards of ~~the Residential Code~~Chapter 23-11, Article 23-11B, Division 23-11B-11, Section R320.6 (Visitable dwelling entrance);

- (b) the building official determines that the ramp will not pose a threat to public health and safety;
- (c) the ramp:
  - (i) is no wider than 48 inches, except that any portion of a landing for the ramp required for turns may be no wider than 60 inches; and
  - (ii) may have a hand railing, but may not have a roof or walls; and
- (d) the ramp is located in a manner that utilizes existing impervious cover to the greatest extent possible if:
  - (i) impervious cover on the property is at or above the maximum amount of impervious cover allowed by this Title; or
  - (ii) if placement of the ramp would result in the property exceeding the maximum amount of impervious cover allowed by this Title; and

~~(11)~~(12) a subsurface portion of a parking structure if the Watershed Protection Department determines that:

- (a) the subsurface portion of the structure:
  - (i) is located within an urban or suburban watershed;
  - (ii) is below the grade of the land that existed before construction of the structure;
  - (iii) is covered by soil with a minimum depth of two feet and an average depth of not less than four feet; and
  - (iv) has an area not greater than fifteen percent of the site;
- (b) the structure is not associated with a use regulated by ~~Section 1.2.2 of Subchapter F of Chapter 25-223-4X-XXXX~~ (Residential Design and Compatibility- Standards);
- ~~(c)~~ the applicant submits an assessment of the presence and depth of groundwater—
  - ~~(e)~~ at the site sufficient to determine whether groundwater will need to be discharged or impounded; and
- (d) the applicant submits documentation that the discharge or impoundment of groundwater from the structure, if any, will be managed to avoid adverse effects on public health and safety, the environment, and adjacent property.

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## 23-3            D-3050    Impervious Cover Assumptions

- (A) This Section applies to impervious cover calculations for ~~duplex two-family~~ or single-family lots.
- (B) Except as provided in Subsection (C):
  - (1) for each lot greater than three acres in size, 10,000 square feet of impervious cover is assumed;

- (2) for each lot greater than one acre and not more than three acres in size, 7,000 square feet of impervious cover is assumed;
- (3) for each lot greater than 15,000 square feet and not more than one acre in size, 5,000 square feet of impervious cover is assumed;



- (4) for each lot greater than 10,000 square feet and not more than 15,000 square feet in size, 3,500 square feet of impervious cover is assumed; and
- (5) for each lot not more than 10,000 square feet in size, 2,500 square feet of impervious cover is assumed.
- (C) For a lot that is restricted to a lesser amount of impervious cover than prescribed by this Section, the lesser amount of impervious cover is assumed. The manner in which the lot is restricted is subject to the approval of the director.
- (D) Except as provided in Subsection (C), this Section does not restrict impervious cover on an individual lot.
- (E) The applicant shall demonstrate that all proposed ~~duplex~~two-family or single-family lots have usable lot area that can reasonably accommodate the assumed square footage of impervious cover established by Subsection (B). The usable lot area must account for all applicable waterway setbacks, floodplains, steep slopes, critical environmental features, protected trees, on-site sewage facilities, and other relevant code restrictions.

**23-3            D-3060    Impervious Cover Limits For Urban Watersheds**

- (A) Applicability
  - (1) This Section applies to development in the uplands zone of an urban watershed.
  - (2) Impervious cover limits in this Section are expressed as percentages of gross site area for the entire site.
- (B) Maximum Impervious Cover
  - (1) Maximum impervious cover for development within the City’s zoning jurisdiction is established in ~~Section Article 23-3C4D~~ (Specific to ~~-Zones~~).
  - (2) Maximum impervious cover for development outside the City’s zoning jurisdiction is 80 percent.

**23-3            D-3070    Impervious Cover Limits For Suburban Watersheds**

- (A) Applicability
  - (1) This Section applies to development in the uplands zone of a suburban watershed.
  - (2) Impervious cover limits in this Section are expressed as percentages of gross site area for the entire site.
- (B) Maximum Impervious Cover
  - (1) 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.



- (a) Impervious cover for a ~~duplex~~two-family or single-family residential use with a minimum lot size of 5,750 square feet may not exceed:
  - (i) 45 percent; or



- (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 50 percent.
  - (b) Impervious cover for a ~~duplex~~two-family or single-family residential use with a lot smaller than 5,750 square feet in size may not exceed:
    - (i) 55 percent; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 60 percent.
  - (c) Impervious cover for a multi-family residential use may not exceed:
    - (i) 60 percent; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 65 percent.
  - (d) Impervious cover for a commercial, civic, or industrial use may not exceed:
    - (i) 65 percent; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 70 percent.
  - (e) Impervious cover for mixed use may not exceed:
    - (i) the limits in Subsection (B)(1)(c) for the portion of the ground floor that is multi-family residential;
    - (ii) the limits in Subsection (B)(1)(d) for the portion of the ground floor that is commercial, civic, or industrial; and
    - (iii) impervious cover for the entire site is based on the ratios determined on the ground floor.
- (2) This Subsection applies in the portion of the zoning jurisdiction that is outside the Lake, Rattan, Buttercup, South Brushy, and Brushy Creek watersheds.
- (a) Impervious cover for a ~~duplex~~two-family or single-family residential use with a minimum lot size of 5,750 square feet may not exceed:
    - (i) 50 percent; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 60 percent.
  - (b) Impervious cover for a ~~duplex~~two-family or single-family residential use with a lot smaller than 5,750 square feet in size may not exceed:
    - (i) 55 percent; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 60 percent.
  - (c) Impervious cover for a multi-family residential use may not exceed:
    - (i) 60 percent; or

~~(f)~~

- ~~(ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 70 percent.~~
- ~~(d) Impervious cover for a commercial, civic, or industrial use may not exceed:~~

- (i) 80 percent; or
  - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 90 percent.
- (e) Impervious cover for mixed use may not exceed:
- (i) the limits in Subsection (B)(2)(c) for the portion of the ground floor that is multi-family residential;
  - (ii) the limits in Subsection (B)(2)(d) for the portion of the ground floor that is commercial, civic, or industrial; and
  - (iii) impervious cover for the entire site is based on the ratios determined on the ground floor.

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### 23-3      D-3080    Impervious Cover Limits For Water Supply Suburban Watersheds

- (A) Applicability
- (1) This Division applies to development in the uplands zone of a water supply suburban watershed.
  - (2) Impervious cover limits in this Section are expressed as percentages of net site area.
- (B) Maximum Impervious Cover
- (1) Impervious cover for a ~~duplex~~~~two-family~~ or single-family residential use may not exceed:
    - (a) 30 percent; or
    - (b) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 40 percent.
  - (2) Impervious cover for a commercial, civic, industrial, multi-family, or mixed use may not exceed:
    - (a) 40 percent; or
    - (b) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 55 percent.

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### 23-3      D-3090    Impervious Cover And Density Limits For Water Supply Rural Watersheds

- (A) Applicability
- (1) This Division applies to development in the uplands zone of a water supply rural watershed.
  - (2) Density and impervious cover limits are based on net site area.
- (B) Maximum Impervious Cover and Density
- (1) For a ~~duplex~~~~two-family~~ or single family residential use, density may not ~~exceed~~:

- (a) one unit for each two acres, with a minimum lot size of three-quarters acre;  
or

- (b) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), one unit for each acre, with a minimum lot size of one-half acre.
- (2) This Subsection applies to a cluster housing development that maximizes common open space by grouping housing units to minimize individual yards and has a maximum lot area of 15,000 square feet for detached residential development.
  - (a) Density may not exceed:
    - (i) one unit for each acre; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), two units for each acre.
  - (b) At least 40 percent of the uplands area of a site must be retained in or restored to its natural state to serve as a buffer. The buffer must be contiguous to the development, and must receive overland drainage from the developed areas of the site unless a water quality control is provided. ~~Use of the buffer is limited to fences, utilities that cannot reasonably be located elsewhere, irrigation lines not associated with wastewater disposal, and access for site construction. A wastewater disposal area may not be located in the buffer.~~ Use of the buffer is limited to fences, water quality controls that comply with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards), utilities that cannot reasonably be located elsewhere, irrigation lines not associated with wastewater disposal, and access for site construction. A wastewater disposal area may not be located in the buffer.
- (3) This Subsection applies to a commercial, civic, industrial, multi-family, or mixed use.
  - (a) Impervious cover may not exceed:
    - (i) 20 percent; or
    - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 25 percent.
  - (b) At least 40 percent of the uplands area of a site must be retained in or restored to its natural state to serve as a buffer. The buffer must be contiguous to the development, and must receive overland drainage from the developed areas of the site unless a water quality control is provided. ~~Use of the buffer is limited to fences,~~ ~~(fences,~~ fences, water quality controls that comply with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards), utilities that cannot reasonably be located elsewhere, irrigation lines not associated with wastewater disposal, and access for site construction. A wastewater disposal area may not be located in the buffer.

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## 23-3 D-3100 Impervious Cover Limits For The Barton Springs Zone

### (A) Applicability

- (1) This Section applies to development in the Barton Springs Zone.

### (B) Maximum Impervious Cover

- (1) Maximum impervious cover for development in the Barton Springs Zone is established by 23-3D-9040 (Pollution Prevention Required) in Division 23-3D-



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**23-3**      **D-3110**      **Impervious Cover Limits for Educational Facilities**

- (A) This section establishes impervious cover limits for development of a public primary or secondary educational facility.
- (B) In watersheds other than an urban watershed or the Barton Spring Zone, the maximum impervious cover in an upland zone is 50 percent of net site area or 60 percent of net site area, if transfer of impervious cover is authorized and used.
- (C) In an urban watershed, maximum impervious cover is the greater of:

  - (1) 65 percent gross site area; or
  - (2) the impervious cover allowed under Article 23-4D (Specific to Zones) for the base zoning district in which the educational facility is located.
- (D) In the Barton Springs Zone, maximum impervious cover is established under Division 23- 3D-9 (Save Our Springs).

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**23-3**      **D-3120**      **Transfers Of Development Intensity**

- (A) General Standards

- (1) An applicant who qualifies for a development intensity transfer in compliance with this Section shall comply with the standards of this Subsection to effect the transfer.
  - (a) For transfers between two subdivided tracts:
    - (i) An applicant ~~may~~must transfer development intensity to a receiving tract that is within the same watershed classification as the transferring tract. This limitation does not apply if the transferring and receiving tracts are both owned by the applicant and are separated only by property that is also owned by the applicant.
    - (ii) An applicant shall concurrently plat the transferring and receiving tracts and shall transfer all development intensity at that time.
    - (iii) An applicant shall note the development intensity transfer on the plats of the transferring and receiving tracts, in a manner determined by the director.
    - (iv) An applicant shall file in the deed records a restrictive covenant, approved by the City Attorney, that runs with the transferring tract and describes the development intensity transfer.
  - (b) For transfers between two site plans:
    - (i) An applicant ~~may~~must transfer development intensity to a receiving tract that is within the same watershed classification as the transferring tract. This limitation does not apply if the transferring and receiving tracts are both owned by the applicant and are separated only by property that is also owned by the applicant.
    - (ii) The transfer must be noted on the receiving and transferring site plans.
    - (iii) An applicant shall file in the deed records a restrictive covenant, approved by the City Attorney, that runs with the transferring tract and describes the development intensity transfer.



(iv) The transfer must occur before the receiving and transferring site plans are released.

(c) For transfers within a single site plan, an applicant shall file in the deed records a restrictive covenant, approved by the City Attorney, that runs with the transferring tract and describes the development intensity transfer.

(B) Suburban Watersheds

(1) An applicant who complies with a provision of this Subsection qualifies for the development intensity transfer described in the provision, subject to the standards in Subsection (A) and the impervious cover limitations in Section 23-3D-3070 (Impervious Cover Limits for Suburban Watersheds).

(a) The applicant may transfer 20,000 square feet of impervious cover to an uplands zone for each acre of land in a critical water quality zone:

(i) dedicated to the City or another entity approved by the Watershed Protection Department in fee simple and which the City or other approved entity accepts; or

(ii) on which restrictions are placed to the benefit of the City or other approved entity and which the City or other approved entity accepts; and

(iii) the applicant does not include in impervious calculations elsewhere.

- (b) The applicant may transfer 20,000 square feet of impervious cover to an uplands zone for each acre of land in an uplands zone:
  - (i) located either in the 100-year floodplain or in an environmentally sensitive area as determined by environmental resource inventory and approved by the Watershed Protection Department; and
  - (ii) dedicated to the City or another entity approved by the Watershed Protection Department in fee simple and which the City or other approved entity accepts; or
  - (iii) on which restrictions are placed to the benefit of the City or other approved entity and which the City or other approved entity accepts; and
  - (iv) the applicant does not include in impervious calculations elsewhere.
- (c) Land dedicated in fee simple to the City in compliance with this Subsection may also be credited toward the parkland dedication standards of Article ~~20-2J~~23-3B (Parkland Dedication).

(C) Water Supply Suburban Watersheds

- (1) An applicant who complies with a provision of this Section qualifies for the development intensity transfer described in the provision, subject to the standards in Subsection (A) and the impervious cover limitations in Section 23-3D-3080 (Impervious Cover Limits for Water Supply Suburban Watersheds).
  - (a) The applicant may transfer 15,000 square feet of impervious cover to an uplands zone for each acre of land in a critical water quality zone or water quality transition zone:
    - (i) dedicated to the City or another entity approved by the Watershed Protection Department in fee simple and which the City or other approved entity accepts; or
    - (ii) ~~on which restrictions are placed to the benefit of the City or other approved entity and which the City or other approved entity accepts; and~~
    - (iii) ~~the applicant does not include in impervious calculations elsewhere.~~

- (iv) on which restrictions are placed to the benefit of the City or other approved entity and which the City or other approved entity accepts; and
  - (v) the applicant does not include in impervious calculations elsewhere.
  - (b) Land dedicated in fee simple to the City in compliance with this Subsection ~~may~~ also be credited toward the parkland dedication standards of Article ~~20-2J~~23-3B (Parkland Dedication).
- (D) Water Supply Rural Watersheds
- (1) An applicant who complies with a provision of this Section qualifies for the development intensity transfer described in the provision, subject to the standards in Subsection (A) and the impervious cover limitations in Section 23-3D-3090 (Impervious Cover and Density Limits for Water Supply Rural Watersheds).
  - (a) The applicant may transfer one single-family residential housing unit or 6,000 square feet of impervious cover for commercial, civic, industrial, or multi-family development to an uplands zone for each acre of land in a critical water quality zone or water quality transition zone:
    - (i) dedicated to the City or another entity approved by the Watershed Protection Department in fee simple and which the City or other approved entity accepts; or
    - (ii) on which restrictions are placed to the benefit of the City or other approved entity and which the City or other approved entity accepts; and
    - (iii) the applicant does not include in impervious calculations elsewhere.

~~(iv) on which restrictions are placed to the benefit of the City or other approved entity and which the City or other approved entity accepts; and~~

~~(v) the applicant does not include in impervious calculations elsewhere.~~

(b) Land dedicated in fee simple to the City in compliance with this Subsection may also be credited toward the parkland dedication standards of Article ~~20-2J~~23-3B (Parkland Dedication).

(E) Barton Springs Zone

(1) Development intensity may not be transferred in the Barton Springs Zone except as part of an adjustment in compliance with Section 23-3D-9080 (Limited Adjustment To Resolve Possible Conflicts With Other Laws).

# Division 23-3D-4: Waterway and Floodplain Protection

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## 23-3 D-4010 Waterway Classifications

- (A) This Section classifies the waterways according to drainage area.
- (B) In all watersheds except urban:
  - (1) a minor waterway has a drainage area of at least 64 acres and not more than 320 acres;
  - (2) an intermediate waterway has a drainage area of more than 320 acres and not more than 640 acres; and
  - (3) a major waterway has a drainage area of more than 640 acres.

## 23-3 D-4020 Critical Water Quality Zones Established

- (A) In the water supply rural watersheds, water supply suburban watersheds, and Barton Springs Zone, a critical water quality zone is established along each waterway classified by Section 23-3D-4010 (Waterway Classifications).
  - (1) The boundaries of a critical water quality zone coincide with the boundaries of the 100-year floodplain calculated under fully developed conditions as prescribed in the Drainage Criteria Manual, except:
    - (a) for a minor waterway, the boundaries of the critical water quality zone are located not less than 50 feet and not more than 100 feet from the centerline of the waterway;
    - (b) for an intermediate waterway, the boundaries of the critical water quality zone are located not less than 100 feet and not more than 200 feet from the centerline of the waterway;

- (c) for a major waterway, the boundaries of the critical water quality zone are located not less than 200 feet and not more than 400 feet from the centerline of the waterway; and
- (d) for the main channel of Barton Creek, the boundaries of the critical water quality zone are located 400 feet from the centerline of the creek.



- ~~(2)~~ Notwithstanding the provisions of Subsections (A)(1)(a), (b), and (c), a critical water quality zone does not apply to a previously modified drainage feature serving a railroad or public roadway right-of-way that does not possess any natural and traditional character
- (2) and cannot reasonably be restored to a natural condition, as prescribed in the Environmental Criteria Manual.
- (B) In the suburban watersheds, a critical water quality zone is established along each waterway classified by Section 23-3D-4010 (Waterway Classifications).
- (1) For a minor waterway, the boundaries of the critical water quality zone are located 100 feet from the centerline of the waterway;
  - (2) for an intermediate waterway, the boundaries of the critical water quality zone are located 200 feet from the centerline of the waterway; and
  - (3) for a major waterway, the boundaries of the critical water quality zone are located 300 feet from the centerline of the waterway.
  - (4) The critical water quality zone boundaries may be reduced to not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway if the overall surface area of the critical water quality zone is the same or greater than the surface area that would be provided without the reduction, as prescribed in the Environmental Criteria Manual.
  - (5) Notwithstanding the provisions of Subsections (B)(1), (2), and (3), a critical water -quality zone does not apply to a previously modified drainage feature serving a railroad or public roadway right-of-way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.
- (C) In an urban watershed, a critical water quality zone is established along each waterway with a drainage area of at least 64 acres. This does not apply in the area bounded by Interstate Highway 35, Riverside Drive, Barton Springs Road, Lamar Boulevard, and 15th Street.
- (1) The boundaries of the critical water quality zone coincide with the boundaries of the 100-year floodplain calculated under fully developed conditions as prescribed in the Drainage Criteria Manual; provided that the boundary is not less than 50 feet and not more than 400 feet from the centerline of the waterway.
  - ~~(2)~~ Notwithstanding the provisions of Subsection (C)(1), a critical water quality zone does not apply to a previously modified drainage feature serving a railroad or public roadway right-of-way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.
- (D) Critical water quality zones are established to include the inundated areas that constitute Lake Walter E. Long, Lake Travis, Lake Austin, Lady Bird Lake, and the Colorado River downstream of Lady Bird Lake.
- (E) Critical water quality zones are established along and parallel to the shorelines of Lake Travis, Lake Austin, ~~and~~ Lady Bird Lake, and Lake Walter E. Long.
- (1) The shoreline boundary of a critical water quality zone:
    - (a) for Lake Travis, coincides with the 681.0 foot contour line;
    - (b) for Lake Austin, coincides with the 492.8 foot contour line; ~~and~~
    - (c) for Lady Bird Lake, coincides with the 429.0 foot contour line; and



~~(e)~~(d) for Lake Walter E. Long, coincides with the 554.5 foot contour line.

(2) The width of a critical water quality zone, measured horizontally inland, is:

(a) 100 feet; or

(b) for a detached single-family residential use, 75 feet.

(F) Critical water quality zones are established along and parallel to the shorelines of the Colorado River downstream of Lady Bird Lake.

(1) The shoreline boundary of a critical water quality zone coincides with the river's ordinary high water mark, as defined by Code of Federal Regulations Title 33, Section 328.3 (Definitions).

~~328.3 (Definitions)~~.

~~(2)~~The inland boundary of a critical water quality zone coincides with the boundary of the 100-year floodplain as delineated by the Federal Emergency Management Agency,

~~(2) except that the width of the critical water quality zone, measured horizontally inland, is not less than 200 feet and not more than 400 feet.~~

~~(G) In an urban watershed, a critical water quality zone is established along each waterway with a drainage area of at least 64 acres. This does not apply in the area bounded by Interstate Highway 35, Riverside Drive, Barton Springs Road, Lamar Boulevard, and 15th Street.~~

~~(1) The boundaries of the critical water quality zone coincide with the boundaries of the 100-year floodplain calculated under fully developed conditions as prescribed in the Drainage Criteria Manual, provided that the boundary is not less than 50 feet and not more than 400 feet from the centerline of the waterway.~~

~~Notwithstanding the provisions of Subsection (F)(1), a critical water quality zone does not apply to a previously modified drainage feature serving a public~~

~~(2) roadway right of way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.~~

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### 23-3 D-4030 Water Quality Transition Zones Established

- (A) In the water supply rural watersheds, water supply suburban watersheds, and in the Barton Springs Zone, excluding Lake Austin, Lake Travis, and Lady Bird Lake, a water quality transition zone is established adjacent and parallel to the outer boundary of each critical water quality zone.
- (B) The width of a water quality transition zone is:
  - (1) for a minor waterway, 100 feet;
  - (2) for an intermediate waterway, 200 feet; and
  - (3) for a major waterway, 300 feet.

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### 23-3 D-4040 Critical Water Quality Zone Development

In all watersheds, development is prohibited in a critical water quality zone except as provided in this Division. Development allowed in the critical water quality zone in compliance with this Division must be revegetated and restored within the limits of construction as prescribed in the Environmental Criteria Manual.

- (A) A fence that does not obstruct flood flows is allowed in a critical water quality zone.
- (B) Low impact park development is allowed in a critical water quality zone subject to the conditions in this Subsection.
  - (1) Low impact park development includes a multi-use trail, golf cart path, the portions of a golf course left in a natural state, and an area intended for outdoor activities which does not significantly alter the existing natural vegetation, drainage patterns, or increase erosion. Low impact park development does not include a parking lot.
  - (2) A program of fertilizer, pesticide, and herbicide use is approved by the Watershed Protection Department.

- ~~(3)~~ In a water supply rural watershed, water supply suburban watershed, or the Barton Springs Zone, low impact park development is limited to sustainable urban agriculture

- (3) or a community garden if the standards in Subsection (B)(6) are met, multi-use trails, picnic facilities, and outdoor facilities, excluding stables, corrals for animals, and athletic fields.
- (4) A master planned park that is approved by the Council may include recreational development other than that described in Subsection (B)(3).
- (5) ~~A hard surfaced trail that does not~~ may cross the critical water quality zone ~~may be located within the critical water quality zone only if:~~ pursuant to Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings). A hard surfaced trail that does not cross the critical water quality zone may be located within the critical water quality zone only if:
- (a) designed in compliance with the Environmental Criteria Manual;
  - (b) located outside the erosion hazard zone unless protective works are provided as prescribed in the Drainage Criteria Manual;
  - (c) limited to 12 feet in width unless a wider trail is designated in the Urban Trails Master Plan, the Parks and Recreation Long Range Plan, or an adopted park master plan;
  - (d) located not less than 25 feet from the centerline of a waterway if within an urban watershed ~~and not crossing the critical water quality zone; and~~
  - (e) located not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway if within a watershed other than an urban watershed ~~and not crossing the critical water quality zone;~~
  - (f) located not less than 50 feet from the shoreline of Lake Travis, Lake Austin, Lady Bird Lake, and Lake Walter E. Long, as defined in Section 23-3D-4020 (Critical Water Quality Zones Established); and
  - (g) located not less than 100 feet from the ordinary high water mark of the Colorado River downstream from Longhorn Dam.
- (6) Low impact park development may include sustainable urban agriculture or a community garden only if:
- (a) in an urban watershed and located not less than 25 feet from the centerline of a waterway, or in a watershed other than an urban watershed and located not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway;
  - (b) located not less than 50 feet from the shoreline of Lake Travis, Lake Austin, Lady Bird Lake, and Lake Walter E. Long, as defined in Section 23-3D-4020 (Critical Water Quality Zones Established);
  - (c) located not less than 100 feet from the ordinary high water mark of the Colorado River downstream from Longhorn Dam;
  - ~~(b)~~ (d) designed in compliance with the Environmental Criteria Manual; and
  - ~~(c)~~ (e) limited to garden plots and paths, with no storage facilities or other structures over 500 square feet.
- (7) In a suburban or urban watershed, low impact park development may include an athletic field only if:

~~the athletic field is-~~



- (a) in an urban watershed and located not less than 25 feet from the centerline\_ of a waterway, or is in a suburban watershed and located not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway; ~~and~~
  - (b) located not less than 50 feet from the shoreline of Lady Bird Lake and Lake Walter E. Long, as defined in Section 23-3D-4020 (Critical Water Quality Zones Established):
  - (c) located not less than 100 feet from the ordinary high water mark of the Colorado River downstream from Longhorn Dam; and
  - ~~(b)~~(d) the applicant submits to the Watershed Protection Department a maintenance plan to keep the athletic field well vegetated and minimize compaction, as prescribed in the Environmental Criteria Manual.
- (C) The standards of this Subsection apply along Lake Travis, Lake Austin, or Lady Bird Lake.
- ~~(1)~~ A dock, public boat ramp, bulkhead or marina, and necessary access and appurtenances, are allowed in a critical water quality zone subject to compliance with Division 23-~~3D-84E-5~~ (Docks, Bulkheads, and Shoreline-~~Access~~). For a single-~~—~~family residential use, necessary access may not exceed the minimum area of land

- (1) disturbance required to construct a single means of access from the shoreline to a dock.
- (2) Disturbed areas must be restored in compliance with the Environmental Criteria Manual and the following standards:
  - (a) Within a lakefront critical water quality zone, or an equivalent area within 25 feet of a shoreline, restoration must include:
    - (i) at least one native shade tree and one native understory tree, per 500 square feet of disturbed area; and
    - (ii) one native shrub per 150 square feet of disturbed area; and
  - (b) Remaining disturbed areas must be restored per standard specifications for native restoration.
- (3) Within the shoreline setback area defined by Section 23-~~3C-30504D-2070~~ (Lake Austin (LA) Residential Zone) and within the overlay established by Section 23-~~3C-71104D-9100~~ (Lake Austin Overlay Zone), no more than 30 percent of the total number of shade trees of 8 inches or greater, as designated in the Environmental Criteria Manual, may be removed.
- (4) Before a building permit may be issued or a site plan released, approval by the Watershed Protection Department is required for chemicals used to treat building materials that will be submerged in water.
- (5) Bank erosion above the 100-year floodplain may be stabilized within a lakefront critical water quality zone if the restoration meets the standards of Subsection (C)(2) of this Section.
- (6) A retaining wall, bulkhead, or other erosion protection device must be designed and constructed to minimize wave return and wave action in compliance with the Environmental Criteria Manual. A shoreline modification within the wave action zone with a greater than 45 degree vertical slope for any portion greater than one foot in height is not allowed on or adjacent to the shoreline of a lake, unless the shoreline modification is located within an existing man-made channel.

- (D) A utility line, including a storm drain, is prohibited in the critical water quality zone, except as provided in Subsection (E) or for a necessary crossing. A necessary utility crossing may cross into or through a critical water quality zone only if:
- (1) the utility line follows the most direct path into or across the critical water quality zone to minimize disturbance;
  - (2) the depth of the utility line and location of associated access shafts are not located within an erosion hazard zone, unless protective works are provided as prescribed in the Drainage Criteria Manual; and
  - (3) in the Barton Springs Zone, is approved by the Watershed Protection Department.
- (E) In the urban and suburban watersheds, a utility line may be located parallel to and within the critical water quality zone if:
- (1) in an urban watershed and located not less than 50 feet from the centerline of a waterway, or in a watershed other than urban and located not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway;
  - (2) located not less than 50 feet from the shoreline of Lady Bird Lake and Lake Walter E. Long, as defined in Section 23-3D-4020 (Critical Water Quality Zones Established);
  - (3) located not less than 100 feet from the ordinary high water mark of the Colorado River downstream from Longhorn Dam;
  - ~~(2)~~(4) \_\_\_\_\_ designed in compliance with the Environmental Criteria Manual;



- ~~(3)~~(5) \_\_\_\_\_ located outside the erosion hazard zone, unless protective works are provided as prescribed in the Drainage Criteria Manual; and
- ~~(4)~~(6) \_\_\_\_\_ the development includes either riparian restoration of an area within the critical water quality zone equal in size to the area of disturbance in compliance with the Environmental Criteria Manual, or payment into the Riparian Zone Mitigation Fund of a non-refundable amount established by ordinance.
- (F) ~~Detention~~In-channel detention basins and in-channel wet ponds are ~~prohibited~~allowed in the critical water quality zone unless only if designed in accordance with the standards of Section 23-3D-4070 (Environmental Criteria Manual Floodplain Modification), Article 23-10E (Drainage), and the other provisions of this Article are met.
- (G) Floodplain modifications are prohibited in the critical water quality zone unless:
  - (1) the floodplain modifications proposed are necessary to ~~protect the address an~~ existing threat to public health and safety, as determined by the director of the Watershed Protection Department;
  - (2) the floodplain modifications proposed would provide a significant, demonstrable environmental benefit, as determined by a functional assessment of floodplain health as prescribed in the Environmental Criteria Manual; or
  - (3) the floodplain modifications proposed are necessary for development allowed in the critical water quality zone by Section 23-3D-4040 (Critical Water Quality Zone Development), 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), or Section 23-3D-8120 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long).
- ~~(H)~~ (H) In the urban and suburban watersheds, vegetative filter strips, rain gardens, biofiltration ponds, areas used for irrigation or infiltration of stormwater, or other controls as prescribed in rule are allowed in the critical water quality zone if:

(1) in an urban watershed and located not less than 50 feet from the centerline of a waterway, or in a watershed other than urban and located not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway;

~~(2) located not less than 50 feet from the shoreline of Lady Bird Lake and Lake Walter E. Long, as defined in Section 23-3D-4020 (Critical Water Quality Zones Established);~~

~~(3) located not less than 100 feet from the ordinary high water mark of the Colorado River downstream from Longhorn Dam;~~

~~(2)(4) \_\_\_\_\_ located outside the 100-year floodplain; and~~

~~(3)(5) \_\_\_\_\_ located outside the erosion hazard zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.~~

~~(I) Development associated with power generation, transmission, or distribution at the Decker Creek Power Station is allowed in the critical water quality zone.~~

~~(H)(J) \_\_\_\_\_ A residential lot that is 5,750 square feet or less in size may not include any portion of a critical water quality zone.~~

~~(J) -) For the purposes of calculating the centerline of a waterway in an urban watershed in compliance with this Section, the waterway must have a drainage area of at least 64 acres and be located outside the area bounded by Interstate Highway 35, Riverside Drive, Barton Springs Road, Lamar Boulevard, and 15th Street.~~

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**23-3 D-4050 Critical Water Quality Zone Street, Driveway, And Trail Crossings**

(A) A public street, private street, or driveway may not cross the critical water quality zone of any waterway unless:

(1) necessary to comply with the standards of ~~Article 23-X-XXX9H~~ (Connectivity) or necessary\_ to provide primary access to at least two contiguous acres or at least five residential units;

- (2) the alignment minimizes disturbance to the creek, riparian zone, and other environmental features as specified in the Environmental Criteria Manual; and
  - (3) the crossing does not utilize culverts and is designed in compliance with the Drainage and Environmental Criteria Manuals.
- (B) Notwithstanding Subsection (A), improvements are allowed to existing public streets, private streets, and driveways crossing the critical water quality zone that are determined by the Watershed Protection Department to be necessary to protect public health and safety for the purposes of flood mitigation or erosion.
- (C) In all watersheds, multi-use trails may cross a critical water quality zone of any waterway if:
- (1) designed in compliance with the Environmental Criteria Manual; and
  - (2) the development demonstrates no additional adverse impact from flood or erosion potential.

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**23-3            D-4060    Water Quality Transition Zone Development**

- (A) Water Supply Suburban Watersheds
- (1) Development is prohibited in a water quality transition zone that lies over the South Edwards Aquifer recharge zone, except for:

- (a) development described in Section 23-3D-4040 (Critical Water Quality Zone Development) or Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings); and
  - (b) minor drainage facilities or water quality controls that comply with Section 23- 3D-4070 (Floodplain Modification) and the floodplain modification criteria in the Environmental Criteria Manual.
- (2) 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. In determining land area, land in the 100-year floodplain is excluded.
- (3) Water quality controls may be located in a water quality transition zone that does not lie over the South Edwards Aquifer recharge zone.
- (B) Water Supply Rural Watersheds
- (1) Development is prohibited in a water quality transition zone that lies over the South Edwards Aquifer recharge zone, except for:
- (a) development described in Section 23-3D-4040 (Critical Water Quality Zone Development) or Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings); and
  - (b) minor drainage facilities or water quality controls that comply with Section 23- 3D-4070 (Floodplain Modification) and the floodplain modification criteria in the Environmental Criteria Manual.
- (2) Development is prohibited in a water quality transition zone that lies outside the South Edwards Aquifer recharge zone, except for:

- (a) development described in Section 23-3D-4040 (Critical Water Quality Zone Development) or Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings);
  - (b) minor drainage facilities or water quality controls that comply with Section 23-3D- 4070 (Floodplain Modification) and the floodplain modification guidelines of the Environmental Criteria Manual;
  - (c) streets; and
  - (d) ~~duplex two-family~~ 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 floodplain.
- (3) A lot that lies within a critical water quality zone must also include at least two acres in a water quality transition zone or uplands zone.
- (C) Barton Springs Zone Watersheds
- (1) Development is prohibited in a water quality transition zone that lies over the South Edwards Aquifer recharge zone, except for:
    - (a) development described in Section 23-3D-4040 (Critical Water Quality Zone Development) or Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings); and
    - (b) minor drainage facilities or water quality controls that comply with Section 23- 3D-4070 (Floodplain Modification) and the floodplain modification criteria in the Environmental Criteria Manual.

- (2) Development is prohibited in a water quality transition zone that lies outside the South Edwards Aquifer recharge zone, except for:
  - (a) development described in Section 23-3D-4040 (Critical Water Quality Zone Development) or Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings);
  - (b) minor drainage facilities or water quality controls that comply with Section 23-3D- 4070 (Floodplain Modification) and the floodplain modification guidelines of the Environmental Criteria Manual;
  - (c) streets; and
  - (d) ~~duplex~~two-family or single-family residential housing 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 floodplain.

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### 23-3      D-4070   Floodplain Modification

- (A) Floodplain modification within a critical water quality zone is prohibited except as allowed in compliance with Section 23-3D-4040 (Critical Water Quality Zone Development).
- (B) Floodplain modification outside a critical water quality zone is ~~prohibited~~ except as allowed in this Section only if the modification proposed:
- ~~(C) Floodplain modification is allowed only if the modification proposed:~~
  - (1) is necessary to ~~protect the~~ address an existing threat to public health and - safety, as determined by the director of the Watershed Protection Department;

- (2) would provide a significant, demonstrable environmental benefit, as determined by a functional assessment of floodplain health as prescribed in the Environmental Criteria Manual;
- (3) is located within a floodplain area classified as in fair or poor condition, as determined by a functional assessment of floodplain health as prescribed in the Environmental Criteria Manual; or
- (4) is necessary for development allowed by Section 23-3D-4040 (Critical Water Quality Development), 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), or Section 23-3D-8120 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long).

~~(D)~~(C) ~~Floodplain~~-All floodplain modifications must:

- (1) be designed to accommodate existing and fully-vegetated conditions;
- (2) encourage sound engineering and ecological practices, prevent and reduce degradation of water quality, and encourage the stability and integrity of floodplains and waterways, as prescribed in the floodplain modification criteria in the Environmental Criteria Manual;
- (3) restore floodplain health, or provide mitigation if restoration is infeasible, to support natural functions and processes as prescribed in the floodplain modification criteria in the Environmental Criteria Manual; and
- (4) comply with the standards of Article 23-10E (Drainage), the Drainage Criteria Manual, and the Environmental Criteria Manual.

~~(E)~~(D) If mitigation is required by this Section, it may be satisfied by:

Floodplain Modification

- (1) paying into the Riparian Zone Mitigation Fund a nonrefundable amount established by ordinance;
- (2) transferring in fee simple or placing restrictions on mitigation land approved by the Watershed Protection Department and meeting the following conditions:
  - (a) located within the same watershed classification;
  - (b) in compliance with the procedures in Section 23-3D-2040 (Redevelopment Exception in the Barton Springs Zone), Subsection (H)(3);
  - (c) dedicated to or restricted for the benefit of the City or another entity approved by the Watershed Protection Department and which the City or other approved entity accepts; and
  - (d) an amount proportionate to the amount of area within the existing floodplain that is proposed to be modified, as prescribed in the Environmental Criteria Manual; or
- (3) a combination of the mitigation methods described in Subparagraphs (1) and (2), if approved by the Watershed Protection Department.





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# Division 23-3D-5: Protection for Special Features

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## 23-3 D-5010 Environmental Resource Inventory

- (A) An applicant shall file an environmental resource inventory with the director for proposed development within a site located on a tract:
- ~~(1) over a karst aquifer;~~
  - ~~(2) within an area draining to a karst aquifer or reservoir;~~
  - ~~(1) in~~ Within the Edwards Aquifer recharge or contributing zone;
  - ~~(2) Within the Drinking Water Protection Zone;~~
  - (3) Containing a water quality transition zone;
  - (4) ~~in~~ Containing a critical water quality zone;
  - (5) ~~in~~ Containing a floodplain; or
  - (6) ~~on a tract with~~ With a gradient of more than 15 -percent.
- (B) An environmental resource inventory must:
- (1) ~~identify~~ Identify critical environmental features and propose protection measures for the features;
  - (2) ~~provide~~ Provide an environmental justification for spoil disposal locations or roadway alignments;
  - (3) ~~propose~~ Propose methods to achieve overland flow;
  - (4) ~~describe~~ Describe proposed industrial uses and the pollution abatement program; and
  - (5) ~~be~~ Be completed as prescribed in the Environmental Criteria Manual.
- (C) An environmental resource inventory must include the following elements:
- (1) Hydrogeologic Report
    - (a) ~~generally~~ Generally describe the topography, soils, and geology of the site;
    - (b) ~~identify~~ Identify springs and significant point recharge features on the site;

- (c) ~~demonstrate~~Demonstrate that proposed drainage patterns will protect the quality and quantity of recharge at significant point recharge features; and
  - (d) ~~identify~~Identify all recorded and unrecorded water wells, both on the site and within 150 feet of the boundary of the site.
- (2) Vegetation Report
- (a) ~~demonstrate~~Demonstrate that the proposed development:



- (i) ~~preserves~~**Preserves** to the greatest extent practicable the significant trees and vegetation on the site; and
- (ii) ~~provides~~**Provides** maximum erosion control and overland flow benefits from the vegetation.
- (b) ~~include~~**Include** one of the following:
  - (i) ~~a~~**A** tree survey of all trees with a diameter of at least eight inches measured four and one-half feet above natural grade level; or
  - (ii) ~~on~~**On** approval of the Watershed Protection Department, aerial imagery that was photographed between the months of April and November; ~~and~~
  - (iii) ~~include~~**Include** a vegetation survey that shows the approximate locations and types of all significant vegetation.
- (3) Wastewater Report
  - (a) ~~provide~~**Provide** environmental justification for a sewer line location in a critical water quality zone;
  - (b) ~~address~~**Address** construction techniques and standards for wastewater lines;
  - (c) ~~include~~**Include** calculations of drainfield or wastewater irrigation areas;
  - (d) ~~describe~~**Describe** alternative wastewater disposal systems used over the Edwards Aquifer recharge zone; and
  - (e) ~~address~~**Address** on-site collection and treatment systems, their treatment levels, and effects on receiving watercourses or the Edwards Aquifer.
- (D) The Watershed Protection Department may permit an applicant to exclude from an environmental resource inventory information required by this Section after determining that the information is unnecessary because of the scope and nature of the proposed development.

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### 23-3D-5020 Pollutant Attenuation Plan

An applicant proposing an industrial use that is not completely enclosed in a building shall provide a pollutant attenuation plan in compliance with the Environmental Criteria Manual.

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### 23-3 D-5030 Critical Environmental Features

- (A) Drainage patterns for proposed development must be designed to protect critical environmental features from the effects of runoff from developed areas, and to maintain the catchment areas of recharge features in a natural state. Special controls must be used where necessary to avoid the effects of erosion, sedimentation, or high rates of flow.
- (B) A residential lot may not include a critical environmental feature or be located within 50 feet of a critical environmental feature.
- (C) This Subsection prescribes the standards for critical environmental feature buffer zones.

- (1) A buffer zone is established around each critical environmental feature described in this Article.
  - (a) Except as provided in Subsection (C)(1)(b), the width of the buffer zone is 150 feet from the edge of the critical environmental feature.
  - (b) For a point recharge feature, the buffer zone coincides with the topographically defined catchment basin, except that the width of the buffer zone from the edge of the critical environmental feature is:
    - (i) ~~not~~Not less than 150 feet;
    - (ii) ~~not~~Not more than 300 feet; and
    - (iii) ~~calculated~~Calculated in compliance with the Environmental Criteria Manual.
- (2) Within a buffer zone described in this Subsection:
  - (a) ~~the~~The natural vegetative cover must be retained to the maximum extent practicable;
  - (b) ~~construction~~Construction is prohibited; and
  - (c) ~~wastewater~~Wastewater disposal or irrigation is prohibited.
- (3) If located at least 50 feet from the edge of the critical environmental feature, the prohibition of Subsection (C)(2)(b) does not apply to:
  - (a) ~~a~~A yard or hiking trail;
  - (b) ~~a~~A recharge basin approved in compliance with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards) that discharges to a point recharge feature; or
  - (c) ~~an~~An innovative runoff management practice approved in compliance with Section 23-3D-6110 (Innovative Management Practices).
- (4) Perimeter fencing with not less than one access gate must be installed at the outer edge of the buffer zone for all point recharge features. The fencing must comply with the Standard Specifications Manual.
- (5) The owner shall maintain the buffer zone in compliance with standards in the Environmental Criteria Manual to preserve the water quality function of the buffer.
- (6) All critical environmental feature locations and required setbacks must be shown on preliminary subdivision plans, site plans, or other permits as determined by the director.
- (7) All critical environmental feature locations must be shown on final plats.
- (D) When voids in the rock substrate are uncovered during development, the following protocol must be followed:
  - (1) Construction in the area of the void must cease while the applicant conducts a preliminary investigation of the void as prescribed in the Environmental Criteria Manual.
  - (2) The applicant shall contact a City Environmental Inspector to schedule further investigation by the City of the void as prescribed in the Environmental Criteria Manual if the preliminary investigation indicates that the void:
    - (a) ~~is~~Is at least one square foot in total area;

blows

(b) Blows air from within the substrate;





- (c) ~~consistently~~**Consistently** receives water during any rain event; or
  - (d) ~~potentially~~**Potentially** transmits groundwater.
- (3) Construction may only proceed after mitigation measures are reviewed and approved by the Watershed Protection Department.
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**23-3 D-5040 Wetland Protection**

- (A) Wetlands must be protected in all watersheds except in the area bounded by Interstate Highway 35, Riverside Drive, Barton Springs Road, Lamar Boulevard, and 15th Street.
- (B) Protection methods for wetlands include:
  - (1) ~~appropriate~~**Appropriate** setbacks that preserve the wetlands or wetland functions;
  - (2) ~~wetland~~**Wetland** mitigation, including wetland replacement;
  - (3) ~~wetland~~**Wetland** restoration or enhancement; or
  - (4) ~~use~~**Use** of wetlands for water quality controls.
- (C) The Watershed Protection Department may approve:
  - (1) ~~the~~**The** removal and replacement of a wetland; or
  - (2) ~~the~~**The** elimination of setbacks from a wetland that is proposed to be used as a water quality control.

# Division 23-3D-6: Water Quality Controls

## Control and Beneficial Use Standards

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### 23-3 D-6010 Applicability Of Water Quality Control Standards

- (A) In the Barton Springs Zone, water quality controls are required for all development.
- (B) In a watershed other than a Barton Springs Zone watershed, water quality controls are required for development:
  - (1) located in the water quality transition zone;
  - (2) of a golf course, play field, or similar recreational use, if fertilizer, herbicide, or pesticide is applied; or
  - (3) if the total of new and redeveloped impervious cover exceeds 8,000 square feet.
- (C) All new development must provide for removal of floating debris from stormwater runoff.

- (D) The water quality control standards in this Division do not require water quality controls on a single-family or ~~duplex~~two-family lot but apply to the residential subdivision as a whole.
- (E) The water quality control standards in this Division do not require water quality controls for a roadway ~~project~~improvement with less than 8,000 square feet of new impervious cover. For the purposes of this Section, roadway improvements are limited to intersection upgrades, low-water crossing upgrades, additions for bicycle lanes, and additions for mass transit stops.

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## 23-3D-6020 Previous Waivers And Special Exceptions

Water quality controls in compliance with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards) are required for a commercial, civic, industrial, or multi-family development with more than 20 percent impervious cover that has been granted a waiver of previous water quality standards or a special exception in compliance with this Article.



### 23-3 D-6030 Water Quality Control And Beneficial Use Standards

- (A) A water quality control must be designed in compliance with the Environmental Criteria Manual.
- (1) The control must provide at least the treatment level of a sedimentation/filtration system in compliance with the Environmental Criteria Manual.
  - (2) An impervious liner is required in an area where there is surface runoff to groundwater conductivity. If a liner is required and controls are located in series, liners are not required for the second or later in the series following sedimentation, extended detention, or sedimentation/filtration.
  - (3) The control must be accessible for maintenance and inspection as prescribed in the Environmental Criteria Manual.
- (B) A water quality control must capture and treat the water draining to the control from the contributing area. The required capture volume is:
- (1) the first one-half inch of runoff; and
  - (2) for each 10 percent increase in impervious cover over 20 percent of gross site area, an additional one-tenth of an inch of runoff.
- (C) A portion of the required capture volume for water quality must be retained and beneficially used on-site through practices that infiltrate, evapotranspire, or harvest and use rainwater. Practices include, but are not limited to, rain gardens, rainwater harvesting, porous pavement, and green roofs, as described in the Environmental Criteria Manual.
- (1) The amount of rainfall that must be retained is based on the impervious cover and associated runoff coefficient for the 95th percentile rainfall event, as prescribed in the Environmental Criteria Manual.
  - (2) Residential subdivisions must demonstrate compliance through practices located on common lots or in right-of-way or other methods as approved by the Watershed Protection Department.
- (D) The location of a water quality control:
- (1) must avoid recharge features to the greatest extent possible;
  - (2) must be shown on the slope map, preliminary plan, site plan, or subdivision construction plan, as applicable; and
  - (3) in a water supply rural watershed, may not be in the 40 percent buffer zone, unless the control disturbs less than 50 percent of the buffer, and is located to maximize overland flow and recharge in the undisturbed remainder of the 40 percent buffer zone.
- (E) This Subsection provides additional standards for the Barton Springs Zone.
- (1) Approval by the Watershed Protection Department is required for a proposed water quality control that is not described in the Environmental Criteria Manual. The applicant shall substantiate the pollutant removal efficiency of the proposed control with published literature or a verifiable engineering study.
  - (2) Water quality controls must be placed in sequence if necessary to remove the required amount of pollutant. The sequence of controls must be:



- (a) based on the Environmental Criteria Manual or generally accepted engineering principles; and



- (b) designed to minimize maintenance requirements.

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### **23-3 D-6040 Optional Payment Instead Of Structural Controls In Urban Watersheds**

- (A) The Watershed Protection Department shall identify and prioritize water quality control facilities for the urban watersheds in an Urban Watersheds Structural Control Plan.
- (B) An Urban Watersheds Structural Control Fund is established for use in the design and construction of water quality control facilities in the urban watersheds.
- (C) Instead of providing the water quality controls required by Section 23-3D-6010 (Applicability of Water Quality Control Standards), in an urban watershed an applicant may request approval to deposit with the City a nonrefundable cash payment. The director shall review the request and approve or disapprove the request based on the standards in the Environmental Criteria Manual.
- ~~(D)~~ In an urban watershed, an applicant may also request approval to pay into the Urban Watersheds Structural Control Fund to reduce the amount of stormwater required to—
- ~~(D)~~ be retained and beneficially used on-site in compliance with Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards). The director shall review the request and approve or disapprove the request based on the standards in the Environmental Criteria Manual.
- (E) If a site qualifies for payment-in-lieu under both Subsections (C) and (D), the payment for water quality required by Subsection (C) satisfies both requirements.
- (F) The director shall deposit a payment made in compliance with this Section in the Urban Watersheds Structural Control Fund.

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### **23-3 D-6050 Optional Payment Instead Of Structural Controls In Suburban Watersheds**

- (A) A Suburban Watersheds Structural Control Fund is established for use in the design and construction of water quality control facilities in the suburban watersheds.
- (B) Instead of providing the water quality controls required by Section 23-3D-6010 (Applicability of Water Quality Control Standards), in a suburban watershed an applicant may request approval to deposit with the City a nonrefundable cash payment. The director shall review the request and approve or disapprove the request based on the standards in the Environmental Criteria Manual. To be eligible to request the optional payment, the development must:
  - (1) be located within the zoning jurisdiction;
  - (2) be a residential subdivision less than two acres in size; and
  - (3) demonstrate exemption from the preliminary plan standard as determined by Section 23-~~4B5B~~-2010 (Preliminary Plan Requirement).

~~(3)~~

- (C) If eligible for the optional payment, the applicant may demonstrate alternative compliance with the beneficial use standards of Section 23-3D-6030 (Water Quality Control and Beneficial Use Standards) in compliance with the Environmental Criteria Manual.



- (D) The director shall deposit a payment made in compliance with this Section in the Suburban Watersheds Structural Control Fund.

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### 23-3 D-6060 Cost Recovery Program

- (A) An applicant who redevelops property in an urban watershed and is required to construct a water quality control may qualify for cost participation by the City for:
- (1) construction of the water quality control; or
  - (2) optional payment instead of construction of the water quality control in compliance with Section 23-3D-6040 (Optional Payment Instead of Structural Controls In Urban Watersheds).

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### 23-3 D-6070 Water Quality Control Maintenance And Inspection

- (A) For a commercial, civic, industrial, or multi-family development:
- (1) The record owner of the development shall maintain the water quality control serving the development in compliance with the Environmental Criteria Manual, whether or not the control is located on the same property as the development. The record owner shall provide the City proof of the right to access and maintain the control if it is not located on the same property as the development.
  - (2) If more than one development is served by a single water quality control, the record owners of the control and all developments served by the control shall be jointly and severally responsible for maintenance of the control in compliance with the Environmental Criteria Manual.
  - (3) The City shall inspect each water quality control that is not a subsurface control at least once every three years to ensure that the control is being maintained in compliance with the Environmental Criteria Manual. If the control fails inspection requiring an additional inspection, the director may charge a re-inspection fee.
  - (4) The record owner of a subsurface water quality control shall provide the Watershed Protection Department with a maintenance plan and an annual report from an engineer verifying that the control is in proper operating condition.
- (B) For a ~~duplex~~two-family or single-family development:
- (1) The City shall be responsible for maintenance of a water quality control only after the control has been accepted for maintenance by the City.
  - (2) The City will accept a water quality control for maintenance upon determining that it meets all standards of the Environmental Criteria Manual and, if applicable, Section 23-3D-6100 (Fiscal Security In The Barton Springs Zone).
  - (3) Until the City accepts a water quality control for maintenance, the record owner(s) of the control and the development served shall maintain the control in compliance with the Environmental Criteria Manual.



~~(C)~~ The Watershed Protection Department may authorize an alternative arrangement for maintenance of a water quality control in compliance with the Environmental Criteria Manual. If an alternative arrangement is approved by the director, the City Attorney shall

~~(C) determine whether an agreement is necessary; the agreement must be approved by the City Attorney and filed of record.~~

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**23-3            D-6080    Dedicated Fund**

- (A) The Finance Department shall establish a dedicated fund to:
  - (1) monitor water quality controls; and
  - (2) maintain water quality controls for single-family and ~~duplex~~two-family residential development.
- (B) An applicant shall pay the required fee into the fund:
  - (1) for development that does not require a site plan, when the applicant posts fiscal security for the subdivision or requests that the director record the subdivision plat, whichever occurs first; or
  - (2) for development that requires a site plan, when the site plan is approved.
- (C) The Watershed Protection Department shall administer the fund, allocate the fund for appropriate projects, and report annually to the Council regarding the status of the fund and the monitoring and maintenance program described in this Section.

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**23-3            D-6090    Barton Springs Zone Operating Permit**

- (A) In the Barton Springs Zone, the owner or operator of a commercial, civic, industrial, or multi-family development is required to obtain an annual operating permit for the required water quality controls.
- (B) To obtain an annual operating permit, an applicant shall:
  - (1) provide the Development Services Department with:
    - (a) a maintenance plan; and
    - (b) the information necessary to verify that the water quality controls are in proper operating condition; and
  - (2) pay the required, nonrefundable fee.
- (C) The Development Services Department may verify that a water quality control is in proper operating condition by either inspecting the water quality control or accepting a report from an engineer.
- (D) The Development Services Department shall issue an operating permit after determining that:
  - (1) the applicant has complied with the standards of Subsection (B); and
  - (2) the water quality controls are in proper operating condition.

- (E) The Development Services Department shall transfer an operating permit to a new owner or operator if, not later than 30 days after a change in ownership or operation, the new owner or operator:
- (1) signs the operating permit;
  - (2) accepts responsibility for the water quality controls; and



- (3) documents the transfer on a form provided by the Development Services Department.

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**23-3            D-6100    Fiscal Security In The Barton Springs Zone**

- (A) For development in the Barton Springs Zone, an applicant shall provide the City with \_fiscal security to ensure that water quality controls are maintained properly. The director shall calculate the amount of fiscal security in compliance with the formula in the Environmental Criteria Manual.
- (B) The director may not return the fiscal security to the applicant until:
  - (1) the expiration of one year after the completion of the development; and
  - (2) the director receives verification that the controls are constructed in compliance with the approved design by:
    - (a) the applicant’s delivery of a certified engineering concurrence letter; and
    - (b) a report from a City inspector.

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**23-3            D-6110    Innovative Management Practices**

- (A) An innovative water quality control is a practice that is not specifically prescribed in the Environmental Criteria Manual, but is designed to address the standards of this Division.
- (B) An innovative runoff management practice is a practice that is designed to address the standards of Section 23-3D-5030 (Critical Environmental Features), enhance the recharge of groundwater and the discharge of springs, and maintain the function of critical environmental features.
- (C) A proposal for an innovative water quality control or runoff management practice proposal must be reviewed and approved by the Watershed Protection Department. Review and approval is based on:
  - (1) technical merit;
  - (2) compliance with the standards of this Title for water quality protection and improvement;
  - (3) resource protection and improvement;
  - (4) advantages over standard practices; and
  - (5) anticipated maintenance requirements.

# Division 23-3D-7: Erosion and Sedimentation Control

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## 23-3 D-7010 Erosion And Sedimentation Control

- (A) Temporary erosion and sedimentation controls:
  - (1) are required for all development until permanent revegetation has been established; and
  - (2) must be removed after permanent revegetation has been established.

## 23-3 D-7020 Development Completion

- (A) Development is not completed until:
  - (1) permanent revegetation is established; and
  - (2) the Development Services Department:
    - (a) receives the engineer's concurrence letter; and
    - (b) certifies installation of the vegetation for acceptance.
- (B) Development must be completed in compliance with Subsection (A) before the City may accept maintenance responsibility for streets, drainage facilities, or utilities, or issue a certificate of occupancy or compliance, unless the City and the applicant enter into an agreement to ensure completion of the revegetation within a named period.

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**23-3 D-7030 Modification Of Erosion Control And Construction Sequencing Plans**

(A) A City inspector may modify an erosion control plan or construction sequencing plan in the field: \_

(1) without notice to the permit holder, if the modification is a minor change to upgrade erosion controls or reflect construction progress; and \_

~~(1)~~

- (2) after two days written notice to the permit holder, if:
  - (a) the inspector determines that an erosion control or the construction sequencing is inappropriate or inadequate; and



(b) the director has confirmed in writing the inspector's determination.

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**23-3 D-7040 Additional Erosion And Sedimentation Control Standards In The Barton Springs Zone**

- (A) This Section provides additional erosion and sedimentation control standards for development in the Barton Springs Zone.
- (B) A temporary erosion and sedimentation control plan and a water quality plan certified by an engineer and approved by the Development Services Department is required.
  - (1) The plans must describe the temporary structural controls, site management practices, or other approved methods that will be used to control off-site sedimentation until permanent revegetation is certified as completed in compliance with Section 23-3D-7020 (Development Completion).
  - (2) The temporary erosion control plan must be phased to be effective at all stages of construction. Each temporary erosion control method must be adjusted, maintained, and repaired as necessary.
- (C) The Development Services Department may require a modification of the temporary erosion control plan after determining that the plan does not adequately control off-site sedimentation from the development. Approval by the Development Services Department and the engineer who certified the plan is required for a major modification of the plan.
- (D) The applicant shall designate a project manager who is responsible for compliance with the erosion and sedimentation control and water quality plan standards during development.
- (E) The length of time between clearing and final revegetation of development may not exceed 18 months, unless extended by the director.
- (F) If an applicant does not comply with the deadline in Subsection (E), or does not adequately maintain the temporary erosion and sedimentation controls, the director shall notify the applicant in writing that the City will repair the controls or revegetate the disturbed area at the applicant's expense unless the work is completed or revegetation is begun not later than the 15th day after the date of the notice.
- (G) A person commits an offense if the person allows sediment from a construction site to enter a waterway by failing to maintain erosion controls or failing to follow the approved sequence of construction.

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**23-3 D-7050 Temporary Storage Areas; Topsoil Protection**

- (A) The site plan or subdivision construction plan must designate the areas to be cleared for temporary storage of spoils or construction equipment. Areas cleared for temporary storage must be located and restored in compliance with the Environmental Criteria Manual.



- (B) During and after site grading and construction operations, the topsoil must be protected and vegetation left in place to the maximum extent practicable in compliance with the Environmental Criteria Manual.



- (C) For areas on the site that are to remain pervious post-development, any soils that are compacted during site grading and construction operations must be decompacted in compliance with the Environmental Criteria Manual and the Standard Specifications Manual.

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**23-3                    D-7060    Fiscal Security**

- (A) A site plan may be approved only if the applicant provides fiscal security for:
  - (1) installing and maintaining erosion and sedimentation controls throughout construction on the site;
  - (2) revegetating the site; and
  - (3) performing on-site and off-site cleanup.

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# Division 23-3D-8: Additional Standards in All Watersheds

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## 23-3 D-8010 Overland Flow

- (A) Drainage patterns must be designed as prescribed in the Environmental Criteria Manual to:
- (1) prevent erosion;
  - (2) maintain and restore infiltration and recharge of local seeps and springs;
  - (3) attenuate the harm of contaminants collected and transported by stormwater; and
  - (4) where possible, disconnect impervious cover, maintain and restore overland

sheet flow, maintain natural drainage features and patterns, and disperse runoff back to sheet flow.

- (B) Where applicable, the applicant shall design an enclosed storm drain to mitigate potential adverse impacts on water quality by using methods to prevent erosion and dissipate discharges from outlets. Applicant shall locate discharges to maximize overland flow through buffer zones or grass-lined swales wherever practicable.

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**23-3**

**D-8020 Interbasin Diversion**

- (A) Development may not divert stormwater from one watershed to another, except as authorized by this Section.
- (B) A proposed diversion of less than 20 percent of the site based on gross site area or less than one acre, whichever is smaller, may be allowed if the applicant demonstrates that:

- (1) existing drainage patterns are maintained to the extent feasible; and
- (2) there are no adverse environmental or drainage impacts.

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## **23-3      D-8030   Construction On Slopes**

- (A) The standards of this Section do not apply in an urban watershed.
- (B) Construction of a Roadway or Driveway
  - (1) An applicant may not construct a roadway or driveway on a slope with a gradient of more than 15 percent unless the construction is necessary to provide primary access to:
    - (a) at least two contiguous acres with a gradient of 15 percent or less; or
    - (b) building sites for at least five residential units.
  - (2) For construction described in this Subsection, a cut or fill must be revegetated, or if a cut or fill has a finished gradient of more than 33 percent, stabilized with a permanent structure. This does not apply to a stable cut.
- (C) Construction of a Building or Parking Area
  - (1) An applicant may not construct:
    - (a) a building or parking structure on a slope with a gradient of more than 25 percent; or
    - (b) except for a parking structure, a parking area on a slope with a gradient of more than 15 percent.
  - (2) An applicant may construct a building or parking structure on a slope with a gradient of more than 15 percent and not more than 25 percent if the standards of this Subsection are met.
    - (a) Impervious cover on slopes with a gradient of more than 15 percent may not exceed 10 percent of the total area of the slopes.
    - (b) The terracing techniques in the Environmental Criteria Manual are required for construction that is uphill or downhill of a slope with a gradient of more than 15 percent.
    - (c) Hillside vegetation may not be disturbed except as necessary for construction, and disturbed areas must be restored with native and adapted vegetation as prescribed in the Environmental Criteria Manual.
    - (d) For construction described in this Subsection, a cut or fill must be revegetated, or if a cut or fill has a finished gradient of more than 33 percent, stabilized with a permanent structure. This does not apply to a stable cut.
- (D) Subdivision Notes
  - (1) A preliminary subdivision plan that proposes a single family residential lot on a slope with a gradient of more than 15 percent must include a plan note identifying the lot and describing the standards of Subsection (D)(2).
  - (2) A final plat that proposes a single family residential lot on a slope with a gradient of more than 15 percent must include a plat note:



- (a) identifying the lot; and
- (b) stating the impervious cover and construction standards for the lot.

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## 23-3            D-8040    Clearing Of Vegetation

- (A) Clearing of vegetation is prohibited unless the director determines that the clearing:
  - (1) is in compliance with a released site plan or subdivision construction plan;
  - (2) is allowed in compliance with this Section or Section 23-3D-8050 (Clearing for a Roadway); or
  - (3) is not development, as that term is defined in ~~Chapter Division 23-X-XXX (Definitions)-2M-1 (Terms).~~
- (B) Clearing of vegetation ~~on land used~~ for agricultural ~~purposes~~ operations is prohibited if an application to develop for a non-agricultural use has been granted or is pending. The director may waive this prohibition after determining that the clearing has a ~~bonafide~~ bona fide agricultural purpose and is unrelated to the proposed development or sale of the land for non-agricultural uses.
- (C) An applicant may clear an area up to 15 feet wide or remove a tree with a diameter of not more than eight inches to perform surveying or geologic testing in preparation for site plan or final plat approval.

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## 23-3            D-8050    Clearing For A Roadway

- (A) An applicant may clear an area for road construction after site plan or final plat approval in compliance with this Section.
- (B) Roadway clearing width may not exceed:
  - (1) twice the roadway surface width, or the width of the dedicated right-of-way, whichever is less; or
  - (2) for road construction problem areas of less than 300 feet in length, two and one-half times the roadway width.
- (C) The director may grant an administrative variance to Subsection (B) if required by unusual topographic conditions.
- (D) If clearing on slopes could result in materials sliding onto areas beyond the clearing widths described in Subsection (B), retaining walls or other preventative methods are required.
- (E) The length of time between rough cutting and final surfacing of roadways may not exceed 18 months.
- (F) If the applicant does not meet the deadline described in Subsection (E), the City shall notify the applicant in writing that the City will finish the roadways or revegetate the disturbed area at the applicant's expense unless the work is completed not later than the 60th day after the date of the notice.

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### 23-3 D-8060 Cut Standards

- (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;
  - (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;
  - ~~(4)~~(5) \_\_\_\_\_ for utility construction or a wastewater drain field, if the area is restored to natural grade; or
  - ~~(5)~~(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.
- (B) A cut must be restored and stabilized.
- (C) A roadway cut must be contained within the roadway clearing width described in Section 23-3D-8050 (Clearing for a Roadway).
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### 23-3 D-8070 Fill Standards

- (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;
  - (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;~~

~~(4)(5)~~ \_\_\_\_\_ for utility construction or a wastewater drain field; or

~~(5)(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.

(B) A fill area must be restored and stabilized.

(C) Fill for a roadway must be contained within the roadway clearing width described in Section 23-3D-8050 (Clearing for a Roadway).

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**23-3 D-8080 Spoil Disposal**

- (A) A spoil disposal site may not be located in a 100-year floodplain or on a slope with a gradient of more than 15 percent.
- (B) The location of a spoil disposal site must be reasonably accessible. An access route:
  - (1) must use existing and approved roadways, if possible; and
  - (2) may not be located in a waterway, unless:
    - (a) a reasonable alternative is not available; or
    - (b) the access route is for the construction of a water quality control.
- (C) A spoil disposal site and an access route must be restored and revegetated in compliance with the Environmental Criteria Manual.

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**23-3 D-8090 Blasting Prohibited**

- (A) Blasting on property located in the Edwards Aquifer recharge zone is prohibited in a critical water quality zone or a water quality transition zone, unless the applicant demonstrates that a feasible alternative does not exist.
- (B) Blasting is prohibited within 300 feet of a critical environmental feature, unless the applicant demonstrates that a feasible alternative does not exist.

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**23-3 D-8100 Wastewater Restrictions**

- (A) A lot in the Edwards Aquifer recharge zone with private on-site sewage facilities must demonstrate compliance with City Code Chapter 15-5 (Private Sewage Facilities).
- (B) ~~Wastewater treatment by land~~ Land application of treated wastewater effluent is prohibited:
  - (1) on a slope with a gradient of more than 15 percent;

- (2) in a critical water quality zone;
- (3) in a 100-year floodplain;
- (4) on the trunk of trees required to be surveyed ~~trees~~ as prescribed in the Environmental Criteria Manual;
- (5) in the buffer zone established around a critical environmental feature in compliance with Section 23-3D-5030 (Critical Environmental Features); or
- (6) during wet weather conditions.

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## 23-3D-8110 Storm Sewer Discharge

A certificate of occupancy may not be issued for development subject to this Article unless the development is in compliance with Chapter 6-5, Article 5 (Discharges Into Storm Sewers Or Watercourses).

**23-3**

**D-8120 Restrictions On Development Impacting Lake Austin, Lady Bird Lake, And Lake Walter E. Long**

- (A) The standards of this Section apply to development on or adjacent to Lake Austin, Lady Bird Lake, or Lake Walter E. Long.
  - (B) Except as otherwise provided by this Section, placing fill or dredging in a lake is prohibited.
  - (C) A retaining wall, bulkhead, or other erosion protection device may not capture or recapture land from a lake unless doing so is required to restore the shoreline to whichever of the following boundaries would encroach the least into the lake:
    - (1) the shoreline as it existed 10 years prior to the date of application, with documentation as prescribed in the Environmental Criteria Manual; or
    - (2) the lakeside boundary of the subdivided lot line.
  - (D) A bulkhead may be replaced in front of an existing bulkhead once, if:
    - (1) the existing bulkhead was legally constructed;
    - (2) construction of the replacement bulkhead does not change the location of the shoreline by more than six inches; and
    - (3) the Watershed Protection Department determines that there is no reasonable alternative to replacement of the bulkhead in the location of the existing bulkhead.
  - (E) The director may approve up to 25 cubic yards of dredging in a lake if the dredging is necessary for navigation safety.
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**23-3**      **D-8130**    **Threatened or Endangered Species Notification**

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## (A) Applicability

(1) This Section applies in areas of the planning jurisdiction that may contain habitat for federally listed endangered or threatened species, as defined below:

(a) For bird or plant species, the area west of a line bounded by U. S. 183 North at the City's extraterritorial boundary limit, then southeast to Loop 1, then south along Loop 1 to U.S. 290 West, then west on U. S. 290 to R.M. 1826, and then south to the City's extraterritorial boundary limit.

(b) For cave species, the Edwards Aquifer recharge zone as defined by Section 23-3D- 1030 (Description of Regulated Areas).

(c) For salamander species, the areas included in the salamander habitat map maintained by the Watershed Protection Department.

(B) On ~~receipt~~submission of an application for a subdivision or site plan in an area described in Subsection (A)(1), the ~~director~~applicant shall give notice of the application to ~~the~~the appropriate authority, including:

(1) United States Fish and Wildlife Service;

(2) Texas Parks and Wildlife Department; ~~and~~

(3) Balcones Canyonlands Conservation Plan Coordinating Committee Secretary;  
and

~~(3)~~(4) Travis or Williamson County, as applicable.

(C) The notice must include a statement that the development could cause the loss of threatened or endangered species habitat.

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# Division 23-3D-9: Save Our Springs Initiative

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**23-3 D-9010 Title And Purpose**

- (A) This division, to be known as the Save Our Springs Initiative, (SOS hereafter) sets out special requirements for development of land in watersheds within the City's planning jurisdiction which contribute to Barton Springs.
- (B) This division codifies the Save Our Springs Initiative Petition Ordinance as adopted by popular vote on August 8, 1992 and amended by the council.

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**23-3D-9020 Amendment**

This division may be repealed or amended only by an affirmative vote of a three-quarters majority of the city council.

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**23-3D-9030 Declaration Of Intent**

The people of the City declare their intent to preserve a clean and safe drinking water supply, to prevent further degradation of the water quality in Barton Creek, Barton Springs, and the Barton Springs Edwards Aquifer, to provide for fair, consistent, and cost effective administration of the City's watershed protection ordinances, and to promote the public health, safety, and welfare. The City recognizes that the Barton Springs Edwards Aquifer is more vulnerable to pollution from urban development than any other major



groundwater supply in Texas, and that the measures set out in this division are necessary to protect this irreplaceable natural resource.

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### 23-3 D-9040 Pollution Prevention Required

~~(A)~~ In the watersheds contributing to Barton Springs, no development nor any revision, extension, or amendment thereof, may be approved unless it is designed, carried out, and maintained on a site-by-site basis to meet the pollution prevention requirements set forth below for the life of the project. In order to prevent pollution, impervious cover for all such development must be limited to a maximum of 15 percent in the entire recharge zone, 20 percent of the contributing zone within the Barton Creek watershed, and 25 percent in the remainder of the contributing zone. The impervious cover limits shall be calculated on a net site area basis. In addition, runoff from such development shall be managed through water quality controls and ~~onsite~~on-site pollution prevention and assimilation techniques so that no increases occur in the respective average annual loadings of total suspended solids, total phosphorus, total nitrogen, chemical oxygen demand, total

~~(A)~~ lead, cadmium, E. coli, volatile organic compounds, ~~total organic carbon,~~ pesticides, and herbicides from the site. For a given project, impervious cover shall be reduced if needed to assure compliance with these pollutant load restrictions.

(B) Within the watersheds contributing to Barton Springs, Section 23-3D-4020 (Critical Water Quality Zones Established) of the Land Development Code is amended so that in no event shall the boundary of the critical water quality zone be less than 200 feet from the centerline of a major waterway or be less than 400 feet from the centerline of the main channel of Barton Creek. No pollution control structure, or residential or commercial building, may be constructed in the critical water quality zone in these watersheds.

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### 23-3D-9050 No Exemptions, Special Exceptions, Waivers Or Variances

The requirements of this division are not subject to the exemptions, special exceptions, waivers, or variances allowed by Division 23-3D-2 (Exceptions and Variances). Adjustments to the application of this division to a specific project may be granted only as set out in Section 23-3D-9080 (Limited Adjustment To Resolve Possible Conflicts With Other Laws) below.

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### 23-3 D-9060 Application To Existing Tracts, Platted Lots, And Public Schools

(A) This division does not apply to development on a single platted lot or a single tract of land that is not required to be platted before development if the lot or tract existed on November 1, 1991 and the development is either:

- (1) construction, renovation, additions to, repair, or development of a single-family, single-family attached, or a duplex structure used exclusively for residential

- purposes, and construction of improvements incidental to that residential use; or
- (2) development of a maximum of 8,000 square feet of impervious cover, including impervious cover existing before and after the development.

- (B) This division does not apply to development of public primary or secondary educational facilities if the City and the school district enter into a development agreement approved by a three-quarters vote of the city council protecting water quality pursuant to Section 13-2-502(n)(7) of the Land Development Code.
- (C) This division does not apply to the replacement of development which is removed as a result of right-of-way condemnation.
- (D) This division does not apply to a roadway ~~project~~ improvement with less than 8,000 square feet of new impervious cover. ~~For the purposes of this Section, roadway improvements are limited to intersection upgrades, low-water crossing upgrades, additions for bicycle lanes, and additions for mass transit stops.~~

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## 23-3 D-9070 Expiration Of Prior Approvals

- (A) Within the watersheds contributing to Barton Springs, the following provisions shall govern the expiration of certain prior approvals:
  - (1) Previously Approved Preliminary Subdivision ~~Plan~~:
    - (a) Unless it has or will have expired sooner, a preliminary subdivision plan initially approved before the effective date of this division expires one year after the effective date of this division, or two years after its initial approval whichever date is later, unless an application for final plat approval is filed before this expiration date and a final plat is approved no later than 180 days after filing.
    - (b) No approved preliminary plan, and no portion of an approved preliminary plan, shall be valid or effective after the expiration date established by this part, or shall be extended, revised, or renewed to remain effective after the expiration date, except according to Subsection (3) of this section.
  - (2) Previously Approved Site Plan:
    - (a) Unless it has or will have expired sooner, a site plan or phase or portion thereof initially approved before the effective date of this division shall expire one year after the effective date of this division, or three years after its initial approval, whichever date is later, unless:
      - (i) An application is filed before this expiration date for building permits for all structures shown on the site plan or phase or portion thereof and designed for human occupancy, and the building permits are approved and remain valid and certificates of occupancy are issued no later than two years after this expiration date; or
      - (ii) If no building permits are required to construct the structures shown on a site plan described in Subsection (2)(a) of this section, construction begins on all buildings shown on the site plan or portion or phase thereof before this expiration date, and the buildings are diligently constructed and completed, and certificates of compliance or certificates of occupancy are issued no later than two years after this expiration date.
    - (b) No approved site plan, and no separate phase or portion of an approved site plan, shall be valid or effective after the expiration date established by this part, or shall be extended, revised, or renewed to remain effective after the expiration date, except according to Subsection (3) of this section.

- (3) Approved Plans Which Comply: An approved preliminary subdivision plan, portion of a preliminary plan, approved site plan, or separate phase or portion of an approved site plan that complies with this division or that is revised to comply with this division does not expire under Subsection (1) or (2) of this section and remains valid for the period otherwise established by law.

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### **23-3 D-9080 Limited Adjustment To Resolve Possible Conflicts With Other Laws**

- (A) This division is not intended to conflict with the United States Constitution or the Texas Constitution or to be inconsistent with federal or state statutes that may preempt a municipal ordinance or the Austin City Charter.
- (B) The terms of this division shall be applied consistently and uniformly. If a three-quarters majority of the city council concludes, or a court of competent jurisdiction renders a final judgment concluding that this division, as applied to a specific development project or proposal violates a law described in Subsection (A) of this section, the city council may, after a public hearing, adjust the application of this division to that project to the minimum extent required to comply with the conflicting law. Any adjustment shall be structured to provide the maximum protection of water quality.

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### **23-3D-9090 Construction Of Ordinance**

This division is intended to be cumulative of other City ordinances. In case of irreconcilable conflict in the application to a specific development proposal between a provision of this division and any other ordinance, the provision which provides stronger water quality controls on development shall govern. If a word or term used in this division is defined in the Austin City Code of 1981, as that code was in effect on November 1, 1991, that word or term shall have the meaning established by the Austin City Code of 1981 in effect on that date, unless modified in this division.

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### **23-3D-9100 Reduce Risk Of Accidental Contamination**

Within one year of the effective date of this division the City of Austin Environmental and Conservation Services Department shall complete a study, with citizen input, assessing the risk of accidental contamination by toxic or hazardous materials of the Barton Springs Edwards Aquifer and other streams within the City and its extraterritorial jurisdiction. The assessment shall inventory the current and possible future use and transportation of toxic and hazardous materials in and through the City, and shall make recommendations for City actions to reduce the risk of accidental contamination of the Barton Springs Edwards Aquifer and of other water bodies. Within 60 days of completion of the study, and following a public hearing, the city council shall take such actions deemed necessary to minimize risk of accidental contamination of city waters by hazardous or toxic materials.

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### **23-3D-9110 Efficient And Cost-Effective Water Quality Protection Measures**

In carrying out City efforts to reduce or remedy runoff pollution from currently developed areas or to prevent runoff pollution from currently developed or developing areas, the city council shall assure that funds for remedial, retrofit or runoff pollution prevention measures shall be spent so as to achieve the maximum water quality benefit, and shall assure that the need for future retrofit is avoided whenever feasible.

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### **23-3D-9120 Severability**

If any provision, section, subsection, sentence, clause, or phrase of this division, or the application of the same to any person, property, or set of circumstances is for any reason held to be unconstitutional, void, or otherwise invalid, the validity of the remaining portions of this division shall not be affected by that invalidity; and all provisions of this division are severable for that purpose.

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### **23-3D-9130 Adoption Of Water Quality Measures**

The adoption of this division is not intended to preclude the adoption, at any time, by a majority vote of the city council of stricter water quality requirements upon development in the watersheds contributing to Barton Springs or of further measures to restore and protect water quality.

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# ~~ARTICLE~~ **Article 23-3E: Affordable Housing Incentive Program**

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## **23-3 E-1010 Purpose and Intent**

~~This section will discuss the~~The purpose of the Affordable Housing Incentive Program, which ~~this Division~~ is to achieve City housing goals and encourage the production of affordable housing.

## **23-3E-1020 Applicability**

~~This section will describe the conditions under which the Affordable Housing Incentive Program will be applied. If the incentives and requirements differ by area of the City or by Zone, the area(s) and/or Zone(s) will be identified here.~~

## **23-3E-1030 Review Authority**

~~This section will identify the Housing Director as the administrator of the Affordable Housing Incentive Program, and describe the roles and responsibilities of the Director in processing applications, creating rules, and developing program guidelines. Actions~~

that require City Council approval (e.g. in-lieu fees) will also be identified in this section.

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### ~~23-3E-1040 General Provisions for the Affordable Housing Incentive Program~~

~~(A) This section will establish the general provisions of the Affordable Housing Incentive Program, such as Median Family Income (MFI) thresholds (i.e. income targets for eligible households), HUD household affordability limits (i.e. 30%), timing for meeting requirements (e.g. affordable units must be constructed concurrently with market rate units), accepting housing choice vouchers, and other gatekeeper requirements (i.e. minimum requirements that must be met) to ensure the long-term provision of affordable housing, requirements, and procedures for the submittal and review of an application for the Citywide Affordable Housing Bonus Program (AHBP).~~

---

(B) ~~23-3E-1050 — Calculation of Density Bonuses~~ The intent of the AHBP is to:

- (1) Implement the goals and policies of the Austin Comprehensive Plan and the Austin Strategic Housing Blueprint.
- (2) Increase housing supply, diversity, and affordability while preserving and enhancing the unique character of the City's neighborhoods.
- (3) Narrow the housing deficit for households that cannot afford market-priced rental or for-sale housing.

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### **23-3 E-1020 Applicability**

(A) The AHBP applies citywide, with the following exceptions:

- (1) **Downtown Zones.** A density bonus request in the Downtown Core (DC) Zone and Commercial Center (CC) Zone shall meet the requirements of Division 23-3E-2 (Downtown Density Bonus Program).
- (2) **University Neighborhood Overlay Zone.** A density bonus request in the University Neighborhood Overlay (UNO) Zone shall meet the requirements of Section 23-4D- 9110 (University Neighborhood Overlay Zone).
- (3) **Former Title 25.** A density bonus request in the Former 25 (F25) Zone, established in Section 23-4D-8100 (Former 25 Zone), shall be subject to the requirements and density bonus incentives, if any, as available under Former Title 25.

(B) The AHBP requirements are determined based on the zone in which the development is proposed (see Article 23-4D (Specific to Zones) for the applicability per zone).

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### **23-3 E-1030 General Provisions for the Citywide Affordable Housing Bonus Program**

(A) **Approval.** The granting of an Affordable Housing Bonus shall not, in and of itself, be interpreted to require a General Plan or Code amendment, or any other discretionary approval.

(B) **Source of Income.** An applicant cannot deny a prospective tenant housing based solely on the prospective tenant's participation in the Housing Choice Voucher Program or in any other housing voucher program that provides rental assistance.

**(C) Availability**

(1) All affordable housing units must be made available concurrently with the market rate units for single-phase developments and in compliance with the Housing Director-approved phasing plan for multi-phase developments, except as provided in Section 23-3E-1050 (Alternatives to On-site Production of Bonus Units for Residential Development).

(a) For multi-phase developments, an applicant must enter into a written project phasing plan in a form approved by the Housing Director. The phasing plan must be filed with the Housing Director prior to building permits being issued and must contain a plan for the staging of construction of all residential units, specifically the construction of the affordable units.

(2) Failure to comply with this Subsection (C) may result in the withholding of site plan approvals, building permits, or Certificates of Occupancy.

(D) **Proportional Bedroom Count.** Affordable units must be delivered and maintained such that the mix of the number of bedrooms in the affordable units is the same as the mix of the number of bedrooms in the market rate units, except that the provision of dedicated two or three bedroom affordable units may count as two or three one-bedroom/efficiency market-rate units at the discretion of the Housing Director.

**Floating Rental Units.** The locations of affordable rental units in a development may change over time, provided that the property owner maintains the total number of required affordable units for the duration of the

~~This section will establish the percentage of affordable units (or square feet) required by income category and the corresponding density bonus. If the requirements and incentives differ by area of the City or by Zone, the density bonus calculation by area(s) and/or Zone(s) will be identified here. This section will also describe and illustrate the formula(s) for calculating the density bonus.~~

~~It is anticipated that the existing Downtown Density Program will be updated and carried forward, and if so, it will be included in this section.~~

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### **23-3E-1060 Additional Developer Incentives**

~~This section will describe potential development incentives, such as waivers from development standards, expedited application processing, and financial incentives, that an applicant may request in addition to a density bonus to improve project feasibility or to provide greater community benefit.~~

---

~~23-3E-1070 Alternatives to On-site Production of Density Bonus Units~~

~~This section will describe potential alternatives to on-site production of affordable units and the procedures for doing so. Alternatives may include in-lieu fees, off-site production, preservation of subsidized affordable units at risk of converting to market rate, and land dedications.~~

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~~(A) ~~23-3E-1080~~ ~~Affordability Periods~~~~

~~(E) This section will describe the required affordability period (i.e. the amount of time that the~~

**(F) Dispersion and Access**

- (1) On-site affordable housing units should be reasonably dispersed throughout the development to avoid clustering of affordable units.
- (2) All affordable housing units shall be accessible by the same means as the market-rate unit must remain below market), which may differ for rental.
- (3) Occupants of affordable housing units shall have access to all on-site amenities available to market-rate units, including the same access to common areas and ownership facilities afforded to occupants of market-rate units.

(G) Design Standards. Affordable units created through the AHBP may have different interior finishes, features, and appliances so long as the affordable units are functionally equivalent to the market-rate units in the development and the interior components in the affordable units are durable, good quality, and consistent with federal, state, and local standards for new housing.

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## **23-4 E-1040 Affordable Housing Bonus Calculation**

### **(A) Affordable Housing Bonus Incentives**

- (1) As an incentive to provide affordable housing, an applicant may apply for a bonus in compliance with this Division.
- (2) Bonuses include additional:
  - (a) Units in a main building;
  - (b) Dwelling units per acre;
  - (c) Floor area ratio; or
  - (d) Height.
- (3) A residential bonus area is calculated as indicated in Table 23-3E-1040(A) (Bonus Calculation).
- (4) A non-residential bonus area is calculated as indicated in Section 23-3E-1060 (Non- Residential Density Bonus Fee).



**Table 23-3E-1040(A) Bonus Calculation<sup>1</sup>**

<u>Incentive</u>	<u>Bonus Square Feet (Used to determine a fee-in-lieu)<sup>2</sup></u>	<u>Bonus Units<sup>3</sup></u>
<p><u>Additional Units in Main Building (Max. Units)</u>  (See Figure 23-3E-1040(1))</p>	<p><u>Residential gross floor area (GFA)<sup>4</sup> multiplied by the proportion of total units that exceed the maximum units allowed by base entitlements</u>  <math display="block">\frac{\text{Residential Gross Floor Area} \times (\text{Proposed Units} - \text{Base Units})}{\text{Proposed Units}}</math></p>	<p><u>Number of units that exceed the maximum units allowed by base entitlements</u>  <math display="block">\text{Proposed Units} - \text{Allowed Base Units}</math></p>
<p><u>Additional Dwelling Units per Acre (DUA)</u>  (See Figure 23-3E-1040(2))</p>	<p><u>Residential GFA multiplied by the proportion of total units that exceed the maximum units allowed by base entitlements</u>  <math display="block">\frac{\text{Residential Gross Floor Area} \times (\text{Proposed Development DUA} - \text{Base Allowed DUA})}{\text{Proposed Development DUA}}</math></p>	<p><u>Number of units that exceed the maximum units allowed by base entitlements</u>  <math display="block">\frac{\text{Proposed Units} \times (\text{Development DUA} - \text{Base Allowed DUA})}{\text{Proposed Development DUA}}</math></p>
<p><u>Additional Floor Area Ratio (FAR)</u>  (See Figure 23-3E-1040(3))</p>	<p><u>Gross floor area that exceeds the maximum gross floor area allowed by base entitlements</u>  <math display="block">\frac{\text{Area} \times (\text{Proposed Development FAR} - \text{Base Allowed FAR})}{\text{Proposed Development FAR}}</math></p>	<p><u>Number of units multiplied by the proportion of gross floor area that exceeds the maximum gross floor area allowed by base entitlements</u>  <math display="block">\frac{\text{Units} \times (\text{Proposed Development FAR} - \text{Base Allowed FAR})}{\text{Proposed Development FAR}}</math></p>
<p><u>Additional Height (Stories/Feet)</u>  (See Figure 23-3E-1040(1))</p>	<p><u>Gross floor area of any space that exists above the height allowed by base entitlements</u></p>	<p><u>Number of units multiplied by the proportion of Comprehensive Floor Area (CFA)<sup>5</sup> that exists above the height allowed by base entitlements</u>  <math display="block">\frac{\text{Proposed Units} \times (\text{space above the base height limit})}{\text{Comprehensive Floor Area}}</math></p>

1. Where multiple bonuses are applicable, the maximum calculated bonus area/bonus units apply.
2. An applicant may pay a fee-in-lieu of providing on-site affordable units in compliance with Subsection 23-3E-1050(C) (Housing Fee-In-Lieu).
3. Bonus unit calculations round up to the nearest whole number of units.
4. Residential Gross Floor Area (GFA) includes the total enclosed area occupied by residents or serves residents, excludes commercial.
5. CFA includes the total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls and deducting atria airspace. Includes underground facilities, loading docks, parking facilities, and enclosed communication paths.

**Additional Units in Main Building (Max. Units)**  
**Bonus Square Feet**

$$\frac{20,000\text{sf proposed residential GFA}}{\left( \frac{24 \text{ proposed units} - 12 \text{ base}}{24 \text{ proposed units}} \right)} = 10,000 \text{ bonus}$$

**Bonus Units**

$$24 \text{ proposed units} - 12 \text{ base units} = 12 \text{ bonus units}$$

**Base (max.)**                      **Proposed w/ Bonus**



Note: Only one possible scenario shown as an example how to calculate bonus square feet and/or bonus units. Images do not illustrate other applicable development standards.

Figure 23-3E-1040(1) Calculating Bonus for Additional Units in Main Building

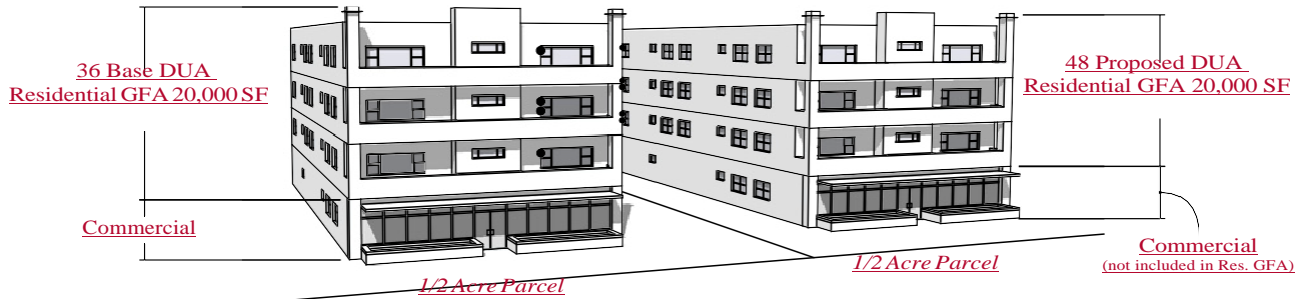
**Additional Dwelling Units per Acre (DUA)**  
**Bonus Square Feet**

$$\frac{20,000\text{sf proposed residential GFA}}{\left( \frac{48 \text{ proposed DUA} - 36 \text{ base}}{48 \text{ proposed}} \right)} = 5,000 \text{ bonus}$$

**Bonus Units**

$$\frac{24 \text{ proposed units}}{\left( \frac{48 \text{ proposed DUA} - 36 \text{ base}}{48 \text{ proposed DUA}} \right)} = 6 \text{ bonus}$$

**Base (max.)**                      **Proposed w/ Bonus**



Note: Only one possible scenario shown as an example how to calculate bonus square feet and/or bonus units. Images do not illustrate other applicable development standards.

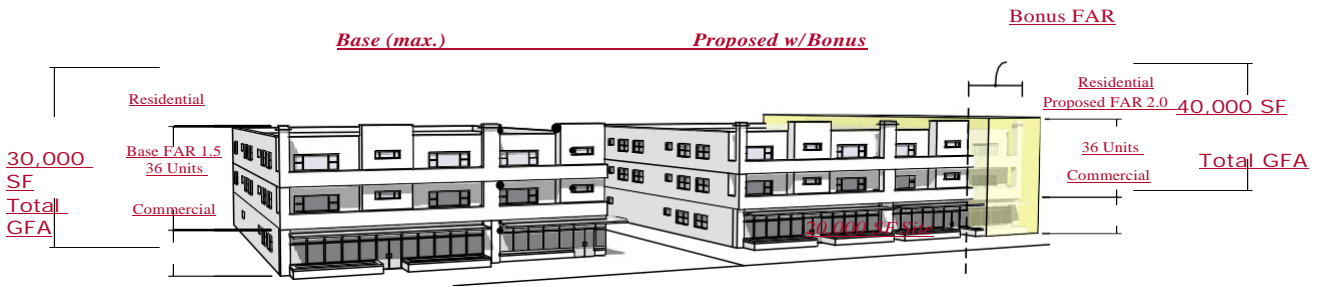
Figure 23-3E-1040(2) Calculating Bonus for Dwelling Units per Acre Bonus

**Additional Floor Area Ratio (FAR)**  
**Bonus Square Feet**

$$\frac{40,000\text{sf}}{\text{GFA}} \times \left( \frac{2.0 \text{ proposed FAR} - 1.5 \text{ base}}{2.0 \text{ proposed FAR}} \right) = 10,000 \text{ bonus}$$

**Bonus Units**

$$36 \text{ units} \times \left( \frac{2.0 \text{ proposed FAR} - 1.5 \text{ base}}{2.0 \text{ proposed FAR}} \right) = 9 \text{ bonus}$$



Note: Only one possible scenario shown as an example how to calculate bonus square feet and/or bonus units. Images do not illustrate other applicable development standards.

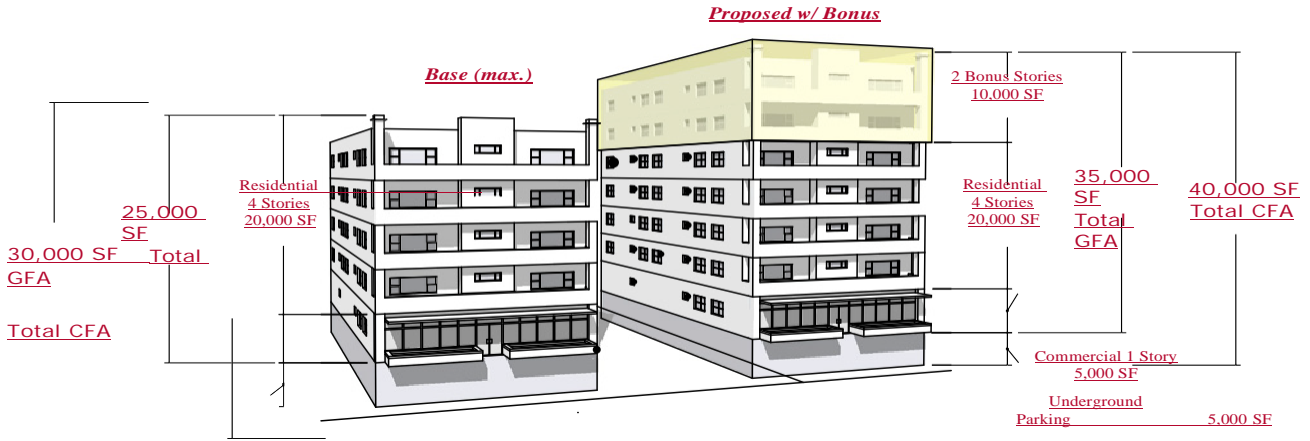
Figure 23-3E-1040(3) Calculating Bonus For Floor Area Ratio Bonus

**Additional Height (Stories/Feet)**  
**Bonus Square Feet**

$$35,000\text{sf proposed GFA} - 25,000\text{sf base GFA} = 10,000 \text{ bonus sf}$$

**Bonus Units**

$$36 \text{ proposed units} \times \left( \frac{40,000\text{sf proposed CFA} - 30,000\text{sf base}}{40,000\text{sf proposed CFA}} \right) = 9 \text{ bonus}$$



23-3E-1040  
Affordable Housing Bonus  
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a  
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o

Citywide Affordable Housing Bonus  
5,000 SF  
Underground  
Parking 5,000  
SF

Note: Only one possible scenario shown as an example how to calculate bonus square feet and/or bonus units. Images do not illustrate other applicable development standards.

Figure 23-3E-1040(4): Calculating Bonus for Height Bonus

Alternatives to On-site Production of Bonus Units for Residential Developments

**(A) Affordable Unit Set Aside for Residential Developments.** The number of units set aside as affordable is determined in compliance with Table 23-3E-1040(B) (Affordable Unit Set Aside Requirements).

**(1) Location.** The required set aside of affordable units is determined based upon a development's location within a geography determined by the Housing Director.

**(2) Calculation.** The bonus units are determined by using Table 23-3E-1040(A) (Bonus Calculation). The number of affordable residential units (set aside) is calculated as follows:

*Bonus Units x Unit Set Aside % = Number of Affordable Units (round up to the nearest whole number of units).*

**Table 23-3E-1040(B): Affordable Unit Set Aside Requirements**

Tenure	Threshold	Units Set Aside <sup>1,2</sup>		All Other Building Types <sup>3</sup> (Geography) <sup>2,4</sup>	Affordability Period (years)
		Multiplex B (% of Bonus Units) <sup>1,4</sup>	Geography <sup>2,4</sup>		
Ownership Units	Households at or below 80% of Median Family Income (MFI)	10%	5%	5%	99
Rental Units	Households at or below 60% of Median Family Income (MFI)	20%	10%	10%	40

1. For a dwelling unit to qualify as "affordable" a unit must comply with Subsection 23-3E-1090(A)(c) for an ownership unit and Subsection 23-3E-1090(B)(c) for a rental unit.

2. All unit set aside calculations resulting in fractional units shall be rounded up to the next whole number.

3. See 23-4E-8030 (Building Types) for other building types.

4. See Subsection (B)(1) (Location).

**(B) Affordability Periods**

**(1) Rental Units.** An applicant shall agree to continued affordability of all affordable rental units for 40 years. The affordability period for rental projects begins on the issuance of the last final Certificate of Occupancy for the development.

**(2) Ownership Units.** An applicant shall agree to continued affordability of all affordable ownership units for 99 years. The affordability period for ownership units begins on the date of sale for each affordable ownership unit to an eligible buyer.

**23-3 E-1050 Alternatives to On-site Production of Bonus Units for Residential Developments**

**(A) Purpose.** This Section describes potential alternatives to on-site production of affordable units in developments with residential units.

(B) **Review Authority.** Any request to meet the AHBP requirements through an alternative other than production of on-site affordable units under this Section requires review by

the designated review group in compliance with Subsection 23-3E-1080(B) (Affordable Housing Bonus Review).

**(C) Housing Fee-in-lieu.** An applicant may pay a fee-in-lieu of providing the affordable units in compliance with the following:

(1) The total fee-in-lieu of affordable units required for a development is determined by multiplying the bonus square feet by the corresponding fee-in-lieu as published in the City's fee schedule at the time the project's site plan is submitted.

$$\text{Bonus Square Feet} \times \text{Housing Fee-in-Lieu per Square Foot} = \text{Total Fee}$$

(2) The bonus square feet shall be calculated in compliance with Table 23-3E-1040(A) (Bonus Calculation).

**(D) Off-site Production.** Off-site production of affordable units may be proposed if the off-site production of affordable units produces more affordable units or a greater community benefit, as determined by the Housing Director. Off-site affordable units:

(1) Must be deed-restricted and may include any combination of new units or units in an existing structure;

(2) Must include at least the same number of units and same bedroom count mix as would be required in the bonus;

(3) Must be within one mile of the property seeking the bonus or in a location approved by the Housing Director, such as a high opportunity area;

(4) Must include the payment of a fee equal to the total fee-in-lieu amount due for the development accessing the AHBP, which is held in escrow, until a final Certificate of Occupancy is issued for the off-site units; and

(5) Must receive Certificate of Occupancy for the off-site units within 36 months of the date that the final Certificate of Occupancy is issued for the property seeking the bonus.

**(E) Land Dedications.** Land dedication may be proposed as an alternative to on-site production of affordable units. The applicant may donate to the City land that is within one mile of the property seeking the bonus, within a high opportunity area, or that the Housing Director determines is suitable for the construction of affordable units and is of equivalent or greater value than is produced by applying the Housing Fee-in-lieu. Any dedicated land must be within the full purpose jurisdiction of the City of Austin.

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### **23-3 E-1060 Non-Residential Density Bonus Fee**

**(A)** For non-residential developments seeking a density bonus, the density bonus is provided as height, stories, or floor area ratio, using the following formula:

$$\text{(Base Feet/Stories/FAR)} + \text{(Bonus Feet/Stories/FAR)} = \text{Total Feet/Stories/FAR (See Article 23- 4D}$$

(Specific to Zones) for the applicable Bonus)

Square footage is calculated using the formulas for Bonus Square Feet in Table 23-3E-1040(A) (Bonus Calculation).

(B) To determine the total fee, the bonus square footage of the non-residential development is multiplied by the Housing Fee-in-Lieu (dollar amount per square foot as published in the City's fee schedule at the time the project's site plan is submitted), using the following formula:

$$\underline{Bonus\ Square\ Feet \times Housing\ Fee-In-Lieu\ per\ Square\ Foot = Total\ Fee}$$

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### **23-3E-1070 Fee Adjustment and Update**

The Housing fee-in-lieu may be adjusted annually as determined by the Housing Director and adopted by the Council to the City's fee schedule. The designated review group may provide recommendations to the Housing Director on adjustments to the fee-in-lieu rate.

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### **23-3 E-1080 Application Procedures**

This section will describe the application requirements and procedures for participating in the Affordable Housing Incentive Program.

- 
- (A) ~~23-3E-1100~~ — Application Requirements. The applicant must submit an Affordable Housing Bonus application to the Housing Director in compliance with Division 23-2B-1 (Application Requirements).
  - (B) Affordable Housing Bonus Review. Any applications requesting to meet the bonus affordability requirements through a fee-in-lieu, provision of affordable units off-site, or land dedication in compliance with Section 23-3E-1050 (Alternatives to On-Site Production of Bonus Units for Residential Development) must be reviewed by a designated review group, prior to application approval by the Housing Director.
  - (C) Housing Director's Approval. Following the submittal of an application in compliance with this Division, the Housing Director shall issue an Affordability Certification Letter to the applicant.
  - (D) Applicant's Obligation. Before the Building Official may issue a Certificate of Occupancy in compliance with Section 23-2H-4020 (Certificate of Occupancy), the applicant must fulfill all obligations including but not limited to the payment of all fees and execution of land use restrictions to ensure that the applicant meets all applicable AHBP requirements.

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### **23-3 E-1090 Land Use Restrictions**

#### **(A) Affordable Ownership Units**

- (1) The landowner must enter into a Declaration of Restrictive Covenant Regarding Affordable Housing Requirements, as amended at the time of the receipt of the Affordability Certification Letter, unless the landowner is required to comply with Subsection (C). The Declaration must include, but is not limited to the following:
  - (a) The affordability period;
  - (b) The agreement that the unit must be sold to an income eligible household at or below 80 percent of the Median Family Income (MFI) HOME Limits, as



amended per household size, and as defined by the U.S. Department of Housing and Urban Development for the Austin-Round Rock Metropolitan Statistical Area. The income determination is conducted by the Housing Director; and

Reporting, Compliance, and Enforcement

- (c) The agreement that the monthly payment (including mortgage principal, interest, taxes, and insurance, as well as any condominium or homeowners' association dues) for an affordable unit must not exceed 30 percent of a household's income at the required MFI. Up to 35 percent of a household's income can be spent on housing costs, which include the monthly rent for ownership units if a household member has completed a City-approved homebuyer counseling or education class.
- (2) The landowner must include Housing Director-approved language regarding the affordable units in the Condominium Declaration or Homeowners Association document.
- (3) At the time of the sale of an affordable ownership unit, the buyer must enter into a Resale Restriction Agreement and a Covenant Limitation on Resale Price and Buyer Income, as amended.
- (4) Other agreements may be entered into, if needed, in order to sell an affordable ownership unit to an eligible buyer.

**(B) Affordable Rental Units**

- (1) The landowner must enter into a restrictive covenant prior to the release of the final Certificate of Occupancy, unless the landowner has to comply with Subsection (C). The restrictive covenant must include, but is not limited to the following:
  - (a) The affordability period;
  - (b) The units must be rented to an income eligible household at or below 60 percent of the Median Family Income (MFI) HOME Limits, as amended per household size, and as defined by the U.S. Department of Housing and Urban Development for the Austin-Round Rock Metropolitan Statistical Area; and
  - (c) A maximum of 30 percent of a household's gross income can be spent on monthly rent. The rental rate must comply with the Housing Director's published rates, as amended.
- (C) **Secure the Affordability Restrictions.** Other agreements may be entered into as approved by the Housing Director, to secure the affordability restrictions of the project.
- (D) **Restrictive Covenant for Zone Change.** If the applicant is requesting a zone change that is required for the delivery of affordable units, the landowner is required to enter into a restrictive covenant or other form of land use restriction at the time of the zone change approval by Council.

**23-3 E-1100 Reporting, Compliance, and Enforcement**

- (A) The Housing Director shall establish processes, compliance, and monitoring criteria for implementing the affordability requirements of this Division. Training of property owners or property managers prior to initial lease up and during the affordability period may be required.
- (B) For rental units, affordability compliance and monitoring requirements must include the submission of Housing Director-approved initial occupancy affordability compliance documentation within 30 days of the issuance of the final Certificate of Occupancy for the last building with a residential use in the development, and monthly thereafter until the property owner has demonstrated compliance with the development's

Reporting, Compliance, and Enforcement

affordability requirements. The Housing Director shall perform monitoring of affordability requirements for the duration of the required affordability period for rental units.

(C) For ownership units, affordability compliance and monitoring will be conducted with the eligible buyer and the Housing Director at the time of sale.

(D) For developments that have received a Affordability Certification Letter, the developer or property owner must notify the Housing Director when Building Permits are issued for the development.

(E) The Housing Director shall enforce the requirements of this Division as provided under Article 23-2J (Enforcement).

This ~~This section will describe monitoring, compliance, and enforcement procedures.~~

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# Division 23-3E-2: Downtown Density Bonus Program

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## **23-3 E-2010 Purpose and Applicability**

- (A) **Purpose.** The purpose of this Division is to provide the procedures for density bonus developments in the Downtown.
- (B) **Applicability.** This Division applies to developments applying for a density bonus within the Downtown Core (DC) and Commercial Center (CC) Zones.

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## **23-3 E-2020 Application Requirements**

- (A) **Rules.** Downtown Density Bonus Program rules shall be adopted and implemented in compliance with City Code Chapter 1-2 (Adoption of Rules).
- (B) **Program Updates.** The Planning Director is responsible for updating the guidelines for the Downtown Density Bonus Program, with the exception of the affordability component, which is the responsibility of the Housing Director.
- (C) **Review** Draft January 2017 — | City of Austin **Authority.** The Planning Director administers the Downtown Density Bonus Program and shall review applications in compliance with Chapter 23-2 (Administration Procedures).
- (D) **Affordable Housing Review.** Following the initial submittal to the Planning Director, the applications for the Downtown Density Bonus Program affordability component shall be submitted to the Housing Director for the initial review and processing procedures in compliance with Division 23-2B-1 (Application Requirements).
  - (1) **Affordable Housing Bonus Review.** Any applications requesting to meet the bonus affordability requirements through a fee-in-lieu, under Subsection 23-3E-2050(C)(3) (Housing Fee in-lieu for Affordable Housing), must be reviewed by a designated review group, prior to application approval by the Housing Director.
  - (2) **Housing Director's Approval.** Following the submittal of an application in compliance with this Division, the Housing Director shall issue an Affordability Certification Letter to the applicant. Affordability Certification Letter is required prior to the Site Plan review by the Development Services Director.
  - (3) **Applicant's Obligation.** Before the Building Official may issue a Certificate of Occupancy in compliance with Section 23-2H-4020 (Certificate of Occupancy), the applicant must fulfill all obligations including but not limited to the payment of all fees and execution of land use restrictions to ensure that the applicant meets all applicable Downtown Density Bonus Program requirements.

**(E) Downtown Density Bonus Floor Area Ratio or Height Requirements**

- (1) The amount of floor area ratio or height achieved by a Downtown Density Bonus for a site is limited by the maximum height or floor area ratio identified on Figure 23-3E- 2050(1) (Downtown Density Bonus Program Map).
- (2) The maximum heights and maximum floor area ratios on Figure 1 (Downtown Density Bonus Program Map) do not modify a site's primary entitlement. If the maximum height or maximum floor area ratio allowed under a primary entitlement exceeds the height or floor area ratio on Figure 1, the bonus area is calculated by using the site's primary entitlement that does not exceed the maximums shown on Figure 1.
- (3) The Council may grant floor area ratio that exceeds the maximum floor area ratio in Figure 1 (Downtown Density Bonus Program Map) if:
  - (a) The applicant has already achieved the maximum floor area ratio in Figure 1 (Downtown Density Bonus Program Map) by participating in the Downtown Density Bonus Program;
  - (b) The applicant submits a written request and rationale for the additional floor area ratio to the Planning Director;
  - (c) The Planning Director makes a written recommendation on the application and then submits the recommendation to the Planning Commission for its review and recommendation; and
  - (d) The Council determines that the additional floor area ratio based on the following findings:
    - (i) The development includes community benefits described in Section 23-3E- 2050 (Community Benefits) in addition to those required to achieve the floor area ratio in Figure 1 (Downtown Density Bonus Program Map);
    - (ii) The same methodology and bonus area is granted for each community benefit as described in the Downtown Density Bonus Program to achieve the desired bonus area;
    - (iii) The Council determines that approving the additional floor area ratio substantially furthers the goals and objectives of the Downtown Austin Plan and the Austin Comprehensive Plan; and
    - (iv) Residential parking is offered separately from the dwelling unit.

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**23-3 E-2030 Downtown Density Bonus Gatekeeper Requirements**

- (A) To receive a density bonus under the Downtown Density Bonus Program, the Planning Director must determine that the development meets the following findings:
  - (1) The applicant must submit to the Planning Director a schematic level site plan, building elevations, and other drawings, simulations or other documents necessary to fully describe the urban design character of the development and relationship of the development to its surroundings.
    - (a) The application shall include a vicinity plan locating the project in context and showing a minimum 9 block area around the project, the location and nature of nearby transit facilities, and a landscape plan.

Changes in Design of Proposed Building

- (b) The Site Plan and landscape plan shall be certified for compliance with the City's Great Streets Standards.
- (2) The Design Commission shall evaluate and make recommendations regarding whether the development is in substantial compliance with the City's Urban Design Guidelines and the Planning Director shall consider comments and recommendations of the Design Commission.
- (3) The applicant shall execute a restrictive covenant committing to provide streetscape improvements along all public street frontages, consistent with the City's Great Streets Standards.
- (4) The applicant shall execute a restrictive covenant committing to achieve a minimum two star rating under the Austin Energy Green Building program using the ratings in effect at the time the development is registered with the Austin Energy Green Building Program. The applicant shall also provide the Planning Director with a copy of the development's signed Austin Energy Green Building Letter of Intent before the Planning Director may approve a density bonus for a site.
- (5) After the Planning Director determines the applicant meets the gatekeeper requirements, the applicant shall provide sufficient written information so that the Director can determine:
- (a) The site's primary entitlement;
- (b) The amount of bonus area that the applicant is requesting;
- (c) The total dollar amount the applicant will pay if the applicant chooses to obtain the entire bonus area exclusively by paying a fee in-lieu, and the amount of the fee to be dedicated to each community benefit; and
- (d) The community benefits the applicant proposes to provide to obtain bonus area if the bonus area will not be obtained exclusively by paying a fee in-lieu.

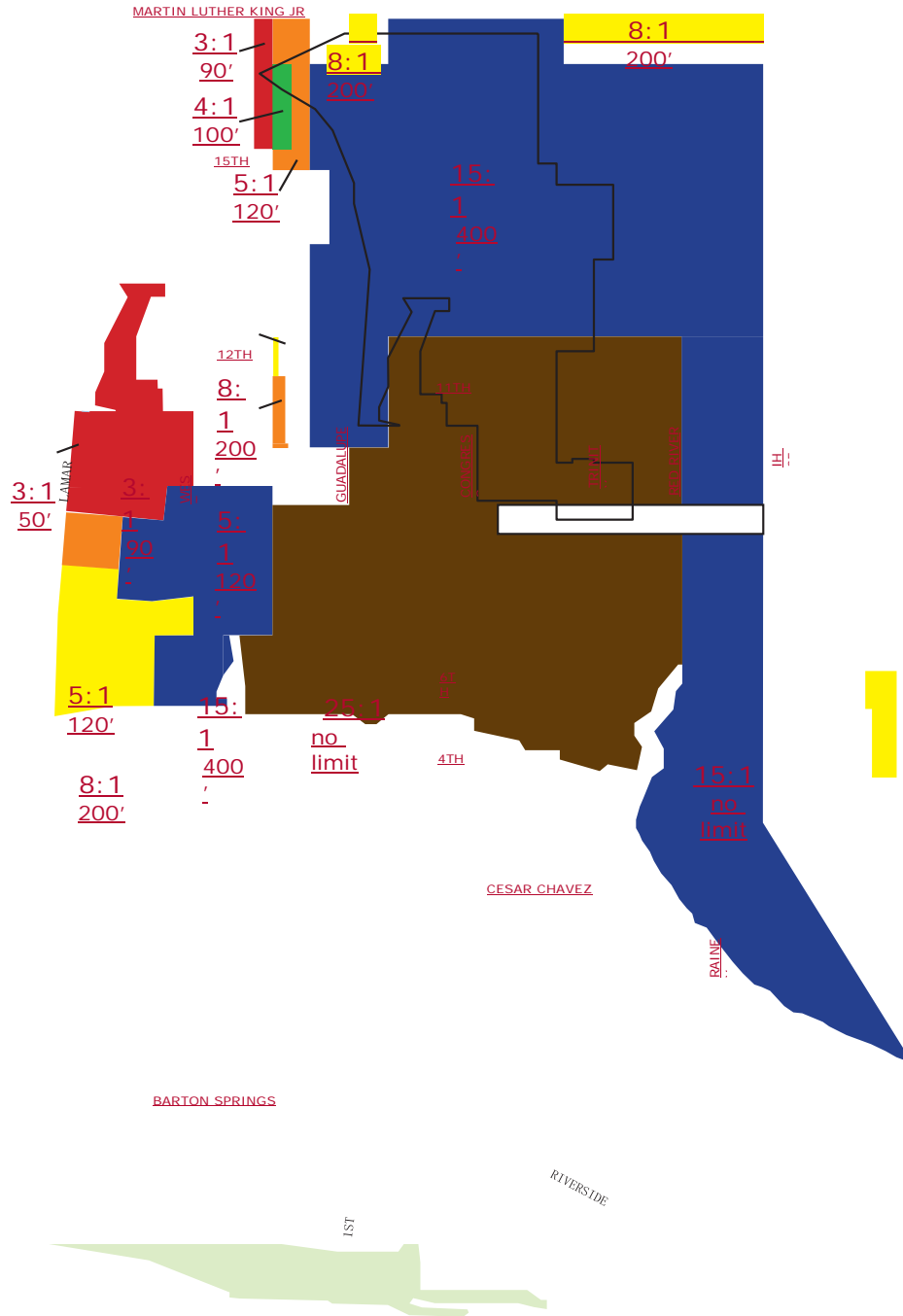
**23-3E-2040 Changes in Design of Proposed Building**

If the design of a building changes after a density bonus is approved under this Section, the Planning Director shall review the new design for compliance with this Section prior to Building Permit approval. A Building Permit for a final design will not be approved until the design complies with this Section and the restrictive covenants are amended to reflect new or revised community benefits.

**23-3 E-2050 Community Benefits**

- (A) **Community Benefit.** An applicant may achieve a density bonus by providing community benefits outlined in this Section.
- (B) **Administrative Approval.** If the applicant chooses to achieve 100 percent of the density bonus by providing community benefits described in Subsection (C) through (E), the Planning Director may approve the density bonus administratively.
- (C) **Affordable Housing Community Benefit.** An applicant may use one or more of the following:

Changes in Design of Proposed Building



DOWNTOWN DENSITY BONUS PROGRAM MAP

- Max. Floor Area Ratio (FAR), Max. Height (Feet) 25:1, no limit
- 15:1, no limit
- 8:1, 200'
- 5:1, 120'
- 4:1, 100'
- 3:1, 90'
- 3:1, 50'



Downtown Density Bonus

Areas Ineligible for Density Bonus Program (Height and density may not exceed underlying zoning

23-3E-  
2050

Figure 23-3E-2050(1) Downtown Density Bonus Program Map

- (1) **On-site Affordable Housing.** A development may achieve a density bonus by providing on-site affordable housing within the development.
  - (a) A maximum of 10 square feet of bonus area shall be granted for each one square foot of dwelling unit devoted to on-site affordable housing. Affordable requirements are identified in Subsection (F).
- (2) **Family-friendly Housing.** A development providing on-site affordable housing may achieve additional density bonus by providing one or more family-friendly eligible bedrooms. The amount of density bonus that may be achieved for each family-friendly eligible bedroom is established by ordinance.
- (3) **Housing Fee in-lieu for Affordable Housing.** The development may achieve a density bonus by paying a fee in lieu of affordable units at the dollar per square foot of density bonus amount established by ordinance.

**(D) Affordable Housing Community Benefit Percentages**

- (1) A development must achieve at least 50 percent of the desired density bonus by providing affordable housing.
- (2) For any portion of the desired density bonus not achieved by providing affordable housing, the applicant must achieve the density bonus by providing one or more of the community benefits provided in Subsections (E) and (F).

**(E) Additional Community Benefit Options**

- (1) **Day Care Services Community Benefit.** A development may achieve density bonus by providing on-site day care services within the development. The amount of density bonus that may be achieved for each square foot of day care services that are provided is established by ordinance.
  - (a) The applicant must execute a restrictive covenant that requires compliance with all relevant requirements of this Section and that ensures continuation of operations and maintenance of the facility with the specified community benefit use for a period of at least 10 years, which is the life of the agreement.
  - (b) City of Austin must approve of the operator and the lease terms, which shall be for no less than ten years.
  - (c) The facility must comply with applicable state and local codes.
  - (d) The facility must be open during normal business hours at least five days each week and fifty weeks each calendar year.
  - (e) The facility must be maintained and kept in a good state of repair throughout the life of the agreement.
  - (f) If the day care services use is non-operational for more than 180 days in any 365 day period, the applicant must pay into the Affordable Housing Trust Fund the applicable housing fee-in-lieu for the density bonus initially granted for this community benefit. The payment will be a pro-rated amount based on the time left in the term of the agreement and based on the housing fee-in-lieu in effect when the applicant pays.
- (2) **Cultural Uses Community Benefit.** A development may achieve density bonus by providing on-site cultural uses within the development. The amount of density bonus that may be achieved for each square foot of cultural uses provided is established by ordinance.

- (a) The applicant must execute a restrictive covenant that requires compliance with all requirements of this Section and that ensures continuation of operations and maintenance of the facility with the specified community benefit use for a period of at least 10 years, which is the life of the agreement.
  - (b) Planning Director shall approve the operator and the lease terms, which shall be for no less than 10 years.
  - (c) Use must meet the definition of cultural uses and the space must be leased to a 501(c) organization.
  - (d) If the required use is non-operational for more than 180 days in any 365 day period, the applicant must pay into the Affordable Housing Trust Fund the applicable housing fee-in-lieu for the density bonus initially granted for this community benefit. The payment will be a pro-rated amount based on the time left in the term of the agreement and based on the housing fee-in-lieu in effect when the applicant pays.
- (3) **Live Music Community Benefit.** A development may achieve density bonus by providing an on-site live music use. The amount of density bonus that may be achieved for each square foot of live music use is established by ordinance.
- (a) The applicant must ensure continuation of operations and maintenance of the facility with the specified community benefit use for a period of at least 10 years, which is the life of the agreement.
  - (b) Planning Director shall approve the operator and the lease terms, which shall be for no less than 10 years.
  - (c) The operator of the facility must maintain proper permitting and documentation to play amplified music in said space.
  - (d) The space must meet the City's sound-proofing specifications.
  - (e) If the required use is non-operational for more than 180 days in any 365 day period, the applicant must pay into the Affordable Housing Trust Fund the applicable housing fee-in-lieu for the density bonus initially granted for this community benefit. The payment will be a pro-rated amount based on the time left in the term of the agreement and based on the housing fee-in-lieu in effect when the applicant pays.
  - (f) Venues may not charge an up-front fee to performing artists for the use of their facilities or require performing artists to guarantee a minimum attendance through pre-show ticket sales.
- (4) **On-Site Improvements for Historic Preservation Community Benefit.** A development may achieve density bonus by providing on-site improvements for historic preservation. The amount of density bonus that may be achieved for on-site improvements for historic preservation is established by ordinance.
- (a) Buildings Eligible for On-Site Improvements for Historic Preservation Community Benefit include:
    - (i) Buildings designated as City landmarks, Recorded Texas Historic Landmarks, State Antiquities Landmarks, or listed on the National Register of Historic Places;



- (a) The applicant shall execute a restrictive covenant committing to achieve a specified rating under the Austin Energy Green Building (AEGB) program using the ratings in effect at the time the ratings application is submitted for the development or Leadership in Energy & Environmental Design (LEED) program using the most recently launched version of the LEED for New Construction rating at the time of the development's registration.
- (b) The applicant shall also provide the Planning Director with a copy of the development's signed AEGB Letter of Intent for developments seeking AEGB rating or a copy of the completed LEED registration for developments seeking LEED rating before the Planning Director may approve the density bonus for a site.
- (c) An applicant must submit an AEGB or LEED checklist indicating the measures the development intends to complete to meet the applicable green building requirement before the Planning Director may approve a density bonus for a site.
- (d) A development seeking an AEGB rating will be subject to at least one inspection during construction and an inspection at substantial completion. A development seeking LEED certification must submit the LEED design review results and an updated LEED checklist or scorecard indicating the development will be able to obtain LEED certification by substantial completion.

  - (i) If the specified AEGB rating or LEED certification is not achieved within nine months from time of occupancy, an applicant must pay into the Affordable Housing Trust Fund the applicable housing fee in-lieu for the density bonus initially granted for this community benefit. The applicant's payment will be based on the housing fee in-lieu in effect when the applicant pays.
- (7) Publicly Accessible On-Site Plaza Community Benefit.** A development may achieve density bonus by providing a publicly accessible on-site plaza. The amount of the density bonus that may be achieved by providing a publicly accessible on-site plaza is established by ordinance.

  - (a) Requirements for the community benefit includes:

    - (i) If the required plaza is non-operational for more than 180 days in any 365 day period, the applicant must pay into the Downtown Open Space Fund the applicable housing fee in-lieu for the density bonus initially granted for this community benefit. The payment will be based on the housing fee in-lieu in effect when the applicant pays.
- (8) Off-Site Open Space Fee In-lieu Community Benefit.** The development may achieve a density bonus by paying a fee in-lieu of off-site open space at the dollar per square foot in compliance with Section 23-3E-1070 (Fee Adjustment and Update). The fee will be paid into the Downtown Open Space Fund.

  - (a) Planning Director will administer the Downtown Open Space Fund.
  - (b) The fee in-lieu option is only available for open space beyond what is already required by the Land Development Code.
  - (c) The applicant must deposit a nonrefundable cash payment with the City.
- (9) Green Roof Community Benefit.** A development may achieve a density bonus by providing green roofs. The amount of the density bonus that may be achieved for the construction of green roofs is established by ordinance.

- (a) Green Roofs must be built to the Vegetated ("Green") Roof Performance Standards in Appendix W of the Environmental Criteria Manual. The percent of vegetated roof cover is calculated as a portion of total roof area excluding mechanical equipment, photovoltaic panels, swimming pools, and skylights.
- (b) If the green roof fails to meet the Vegetated ("Green") Roof Performance Standards for more than 180 days in any 365 day period, the applicant must pay into the Downtown Open Space Fund the applicable housing fee in-lieu for the density bonus initially granted for this community benefit. The payment will be based on the housing fee in-lieu in effect when the applicant pays.
- (c) Green roof areas used to achieve a density bonus through the Green Roof Community Benefit may not be used to achieve a density bonus through the Publicly Accessible On-Site Plaza Community Benefit.

(F) **Affordability Requirements.** For purposes of this Section, a unit is affordable for purchase or rental if, in addition to the other requirements of this Section, the household is required to spend no more than 30 percent of its gross monthly income on rental payments for the rental unit or monthly payments (which include mortgage principal, interest, taxes, and insurance, as well as any condominium/homeowner association dues) for the ownership unit. Up to 35 percent of a household's gross income can be spent on these monthly payments for ownership units if a household member has completed a City-approved homebuyer counseling or education class.

**(1) Affordability Requirements for Owner-occupied Units**

- (a) On-site for sale affordable housing units shall be reserved, sold and transferred to an income eligible buyer subject to a resale restricted, shared equity agreement approved by the Housing Director, for not less than 99 years from the date the unit is sold to an eligible buyer.
- (b) The units shall be made available for ownership and occupancy by households at or below 120 percent of the Median Family Income (MFI) HOME Limits, as amended per household size, and as defined by the U.S. Department of Housing and Urban Development for the Austin-Round Rock Metropolitan Statistical Area. The income determination is conducted by the Housing Director.

**(2) Affordability Requirements for Rental Units**

- (a) On-site rental affordable housing units shall be reserved as affordable for a minimum of 40 years following the issuance of the Certificate of Occupancy.
- (b) The units shall be made available for rental by households at or below 80 percent of the Median Family Income HOME Limits, as amended per household size, and as defined by the U.S. Department of Housing and Urban Development for the Austin-Round Rock Metropolitan Statistical Area. The income determination is conducted by the Housing Director.
- (c) An applicant may not deny a prospective tenant affordable rental housing based solely on the prospective tenant's participation in the Housing Choice Voucher Program or in any other housing voucher program that provides rental assistance

(G) **Other Community Benefits.** An applicant may offer to provide other community benefits not described in the above Subsections. The applicant must provide sufficient information about the other community benefits for the Planning Director to determine whether the other community benefits serve a public and municipal purpose considering the criteria listed below.



Reporting, Compliance, and Enforcement

- (1) The Planning Director will consider the following to make a determination:
  - (a) If members of the general public will be able to enjoy the proposed other community benefit without paying for its access, use or enjoyment;
  - (b) If the proposed other community benefit will connect to and be accessible from public right-of-way or other publicly-accessible space;
  - (c) If the proposed other community benefit will provide a public amenity that is particularly lacking in the proposed location;
  - (d) If the proposed other community benefit will not impose a significant burden on public resources for maintenance, management, policing, or other reasons; and,
  - (e) Any other information provided by the applicant that shows the other community benefit serves a public and municipal purpose and furthers the City's comprehensive planning goals.
- (2) If a proposed other community benefit provides a partial benefit to a development, it will not be disqualified; the Planning Director will allocate only the cost of the public portion of the benefit to the other community benefits.
- (3) If the Planning Director determines that the proposed benefit qualifies as a community benefit, the Director shall:
  - (a) Quantify the monetary cost for the proposed other community benefit by using standard industry sources as well as locally based data on development costs to quantify the monetary cost, without mark-up, for the proposed other community benefit; and
  - (b) Determine the cost to be applied towards achieving the desired density bonus.
- (4) The amount determined by the Planning Director may be applied to achieve a density bonus on the same basis as the housing fee-in-lieu rate applicable to the type and location of the development.
- (5) The Planning Director's recommendation concerning the proposed other community benefit and the monetary value that is applied to achieve the density bonus shall be presented to the Planning Commission for recommendation and the Council for approval.
- (6) If the applicant proposes to achieve a density bonus by providing other community benefits, the value of the public portion of the proposed other community benefits must be equal to or greater than the total dollar amount the applicant would pay if the payment were based on the applicable housing fee in-lieu required to earn that requested bonus area.
- (H) **Community Benefit Calculations for Mixed-Use Developments.** Mixed-use developments shall provide community benefits in proportion to the amount of floor area in the development that is devoted to different use categories.

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**23-3 E-2060 Reporting, Compliance, and Enforcement**

- (A) The requirements of this Division shall be subject to the reporting, monitoring, and compliance requirements of Subsection 23-3E-1100 (Reporting, Compliance, and Enforcement).



# Division 23-3E-3: Tenant Notification and Relocation

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## **23-3 E-3010 Purpose and Applicability**

- (A) The purpose of this Division is to mitigate, through notification requirements and relocation assistance, the impacts of tenant displacement resulting from multifamily redevelopment and the demolition or change in use of multifamily buildings and manufactured home parks. This Division does not regulate or affect the landlord-tenant relationship.
- (B) Except where otherwise provided, the requirements of this Division do not apply to any dwelling unit:
- (1) Demolished or vacated because of damage caused by the tenant or by other events beyond the owner’s control, including fire, civil commotion, malicious mischief, vandalism, tenant waste, natural disaster or other destruction;
  - (2) Owned by a public housing agency;
  - (3) Located inside the boundaries of an educational facility that is occupied by students, faculty, or staff of the institution;
  - (4) For which relocation assistance is required to be paid to the tenants under federal or state law; or
  - (5) That is operated as emergency or temporary shelter for homeless persons and owned or administered by a nonprofit organization or public agency.

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## **23-3 E-3020 Tenant Notification Required**

- (A) **Applicability.** The tenant notification requirements of this Section apply to an application to:
- (1) Demolish or partially demolish a multifamily building consisting of five or more occupied residential units, including a Demolition Permit or a Building Permit that authorizes demolition;
  - (2) Approve a Site Plan or a land use approval for an existing manufactured home park; or
  - (3) Rezone a property within the Manufactured Home Park (MHP) Zone designation that contains an existing manufactured home park.

Tenant Notification Required

(B) **Timing.** An applicant must provide tenant notification either prior to, or concurrent with, submittal of the application. To demonstrate that the required notification was provided in compliance with this Subsection, the applicant must include a certified statement, on a form approved by the Housing Director, confirming that all tenants entitled to a notice under Subsection (C) received notification within the following timeframes:

- (1) **Multifamily Building.** A minimum of 120 days prior to the date that an application for a Building Permit or a Demolition Permit can be approved; or
- (2) **Manufactured Home Park.** A minimum of 270 days prior to the date that an application for a rezone, Site Plan, or land use approval can be approved.

(C) **Application Approval.** The application may be approved no earlier than:

- (a) For a demolition or building permit, 120 days after all tenants of the multifamily building who are entitled to notice under Subsection (D) receive notification required under this Section; or
- (b) For a rezone, site plan, or change of use permit, at least 270 days after all tenants of the mobile home park entitled to notice under Subsection (D) received notification required under this Section.

(D) **Noticing Delivery Procedures.** The notification required by this Section must be on a form approved by the Housing Director and comply with the following noticing procedures:

- (1) Notice must be delivered by the applicant, or the applicant's representative, or by registered or certified mail, with return receipt requested.
- (2) Notice must be delivered to all units:
  - (a) Proposed for demolition in a multifamily building under a permit application for which notice is required under Subsection (A)(1); or
  - (b) Located in a manufactured home park included in a rezone, land use approval, or Site Plan application for which notice is required under Subsection (A)(2) through (A)(3); and
- (3) Notice must include the following information, in English, Spanish, and any other language as may be required by the Housing Director:
  - (a) The applicant's name and contact information;
  - (b) A description of the development application for which notification is required under Subsection (A);
  - (c) A statement that application may be approved on or after the 120th or 270th day, whichever applies, following receipt of the notice and may result in displacement of tenants;
  - (d) A description of any tenant relocation assistance that may be available under Section 23-3E-3040 (Tenant Relocation Program), including income eligibility requirements and forms of requesting assistance;
  - (e) Information regarding applicable school district policies relating to district residency requirements;
  - (f) Information regarding the requirements of state law for return of security deposits;

- (g) Information regarding the availability of fee waivers from Austin Energy for obtaining utility service at a new residence where relocation is required due to displacement;
- (h) Other information as may be required by the Housing Director, including contact information for tenant relocation assistance and services to assist displaced tenants; and
- (4) The Notice must be on a form provided by the Housing Director, which shall be uniform for all applicants except that the Director may require an additional language as provided under Subsection (D)(3).
- (E) **Re-notification.** If an applicant requests an extension of a demolition permit for which notification under this Section is required, the applicant must provide re-notification to tenants consistent with the requirements for a new application.

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**23-3 E-3030 Additional Notice Requirements**

- (A) At the time that notification is provided under Section 23-3E-3020 (Tenant Notification Required), the owner or operator of a multifamily building or manufactured home park must post one or more signs in compliance with this Section.
- (B) The sign must be on a form approved by the Housing Director and must, in English, Spanish, and any other language as may be required by the Housing Director, include:
  - (1) A description of the application for which notification is required and state that any new or existing tenants may be required to relocate from the site as a result of proposed demolition or redevelopment;
  - (2) Tenant relocation assistance information and contact number; and
  - (3) To the greatest extent feasible:
    - (a) For a multifamily building, be posted at the front of the leasing office or other primary building entrance as determined by the Housing Director.
    - (b) For a manufactured home park, be posted at the main entrance in a location visible to the public from the adjacent public right-of-way or private drive; or
- (C) A sign, required under this Section, must remain on the property until:
  - (1) For a multifamily building, the date that the demolition activity begins; and
  - (2) For a manufactured home park, the earlier of:
    - (a) The date that the property ceases to be used as a manufactured home park, or
    - (b) If applicable, the date that the Site Plan approval or land use approval expires.
- (D) If a landowner or a landowner’s agent rents a unit to a new tenant following application for a permit requiring notice under Section 23-3E-3020 (Tenant Notification Required), the landowner or landowners agent must provide the tenant with notification that includes the information required under Subsection 23-3E-3020(D) (Noticing Delivery Procedures).

**23-3 E-3040 Tenant Relocation Program**

- (A) The Housing Director shall adopt a tenant relocation program by administrative rule for the purpose of mitigating the impacts of tenant displacement resulting from multifamily redevelopment within the City.
- (B) The tenant relocation program must, at a minimum, include each of the following:
- (1) **Tenant Relocation Fee.** The program must include a methodology to be used by the Housing Director in recommending to the Council the amount of the fee required under Section 23-3E-3050 (Tenant Relocation Assistance – Developer Funded).  
The methodology must include a nexus study that accounts for the impacts of displacement to tenant communities directly affected by multifamily redevelopment and to the community as a whole. The fee must be consistently calculated and uniformly applied, but may vary based on number of units, bedrooms, and other objective criteria identified by the nexus study.
  - (2) **Eligibility for Tenant Relocation Assistance.** The program shall establish eligibility requirements that a tenant must meet in order to receive tenant relocation assistance in compliance with Section 23-3E-3050 (Tenant Relocation Assistance – Developer Funded) or Section 23-3E-3060 (Tenant Relocation Assistance – City Funded). At a minimum, the eligibility requirements must:
    - (a) Require that a tenant have a household income at or below 70 percent of median family income or, for residents of a manufactured home park, 80 percent of median family income;
    - (b) Require that a tenant reside at the property on the date that the initial notification required under Section 23-3E-3020 (Tenant Notification Required) is delivered;
    - (c) Require a tenant to submit a claim form documenting income eligibility no later than the deadline established by the Housing Director;
    - (d) Prohibit participation by tenants of multifamily redevelopment that is exempt from this Division under Subsection 23-3E-3010(B), except that the Housing Director may allow use of funds under Section 23-3E-3060 (Tenant Relocation Assistance – City Funded) to provide relocation assistance for tenant displacement resulting from fire, civil commotion, malicious mischief, vandalism, natural disaster, or other destruction beyond the control of the owner or tenant.
  - (3) **Use of Tenant Relocation Assistance.** The program must specify the types of expenses for which tenant relocation assistance may be provided. Eligible expenses paid using funds collected under Section 23-3E-3050 (Tenant Relocation Assistance – Developer Funded) must be reasonably attributable to tenant displacement based on the nexus study required under Subsection (B)(1).
  - (4) **Refund Procedures.** The program shall establish procedures by which an applicant who paid a tenant relocation fee under Section 23-3E-3050 (Tenant Relocation Assistance – Developer Funded) may request a refund of any fees not spent for an authorized purpose within ten years after approval of an application for which notification is required.
- (C) The Housing Director may include additional elements in the tenant relocation program, including but not limited to notification forms and other documents relevant to meeting the requirements of this Division.

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**23-3 E-3050 Tenant Relocation Assistance – Developer Funded**

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- (A) An applicant for a multifamily redevelopment must pay a tenant relocation fee established by separate ordinance as a condition of approval of:
- (1) A Planned Unit Development (PUD) Zone, as required under Section 23-4D-8120 (Planned Unit Development); or
  - (2) A rezone or other discretionary land use approval that requires approval by the Council and is reasonably likely to result in tenant displacement, unless waived by the Council.
- (B) The Housing Director shall deposit a fee imposed under this Section into the Developer Fund for Tenant Relocation Assistance, which is established under this Section. The Housing Director shall use the fund to provide tenant relocation assistance to eligible tenants at the development or site for which the payment was made, consistent with requirements adopted in compliance with Section 23-3E-3040 (Tenant Relocation Program).

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**23-3 E-3060 Tenant Relocation Assistance – City Funded**

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- (A) The City of Austin Tenant Relocation Fund is established for use in providing relocation assistance to tenants displaced by multifamily redevelopment.
- (B) The Housing Director shall administer the fund consistently with guidelines established under Section 23-3E-3040 (Tenant Relocation Program) and may use the fund to provide relocation assistance to any tenant displaced due to:
- (1) Development activity for which notification is required by this Division, whether or not the applicant was required to pay a fee under Section 23-3E-3050 (Tenant Relocation Assistance – Developer Funded);
  - (2) Emergency orders to vacate based on health and safety concerns;
  - (3) Fire, civil commotion, malicious mischief, vandalism, natural disaster, or other destruction beyond the control of the owner or tenant; or
  - (4) Major repairs or renovations of multifamily buildings.

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**23-3 E-3070 Offenses**

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- (A) Failure to deliver the notification required by this Division to one or more units within a multifamily building or manufactured home park, is considered an offense, under Section 23-2J-1020 (General Offenses and Violations). It is a separate offense for each day the applicant fails to deliver required notification to an individual unit within a multifamily building or manufactured home park for which notification is required.
- (B) Each offense is punishable by a fine not to exceed \$500 and requires proof of a culpable mental state.
- (C) The Housing Director shall enforce the requirements of this Division as provided under Article 23-2J (Enforcement).

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# Division 23-3E-4: S.M.A.R.T. Housing

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## 23-3 E-4010 Administration

- (A) The Housing Director shall administer the S.M.A.R.T. Housing program and may adopt and implement program guidelines or rules and establish the requirements for an application under the program.
- (B) The Housing Director shall notify the Public Works Director and Transportation Director of proposed S.M.A.R.T. Housing developments within a half mile of an existing or planned transit route or stop.

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## 23-3 E-4020 Program Requirements

- (A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's Green Building Standards.
- (B) S.M.A.R.T. Housing must:
  - (1) Be safe by providing housing that complies with this Title;
  - (2) Provide mixed-income housing by including dwelling units that are reasonably-priced, as described in Subsection (C);
  - (3) Provide for accessibility for a development of more than three dwelling units by providing at least 10 percent of the dwelling units that comply with the accessibility requirements of the Building Code;
  - (4) Provide for visitability for a development with three or fewer dwelling units by either:
    - (a) Complying with the design and construction requirements of City Code Chapter 5-1, Article 3, Division 2 (Design and Construction Requirements); or
    - (b) Complying with the local visitability amendment of the International Residential Code.
  - (5) Be located within one-half mile walking distance of a local public transit route at the time of application, except as provided in Subsection (D); and
  - (6) Achieve at least a one star rating under the Austin Green Building Program.

- (C) A reasonably-price dwelling unit is one that is affordable for:
- (1) Purchase by a household that meets the following housing costs and income qualifications:
    - (a) Housing costs of a household may not exceed 30 percent of its gross monthly income, except as provided by Subsection (C)(1)(b) and (c).
    - (b) A household may spend up to 35 percent of its gross monthly income on housing costs if a household member receives City-approved homebuyer counseling or education.
    - (c) A household that complies with other federal, state, or local income eligibility standards is not subject to the expenditure qualifications of Subsection (C)(1)(a) and (b).
    - (d) The household income may not exceed the percentage of Median Family Income (MFI) required by Section 23-3E-4030 (Affordability Requirements).
  - (2) Rental by a household that meets the following housing costs and income qualifications:
    - (a) Housing costs of a household may not exceed 30 percent of its gross monthly income, except as provided by Subsection (C)(2)(b).
    - (b) A household that complies with other federal, state, or local income eligibility standards is not subject to the expenditure qualifications of Subsection (C)(2)(a).
    - (c) The household income may not exceed the percentage of MFI required by Section 23-3E-4030 (Affordability Requirements).
- (D) The Housing Director may waive the transit-oriented requirement in Subsection (B)(5) if the development meets one of the following criteria:
- (1) The development will be located in a high opportunity area as identified by the Housing Director or established in the program guidelines;
  - (2) The applicant applies for State or Federal Government funds, including the Low Income Housing Tax Credit Program, related to the development;
  - (3) The development affirmatively furthers fair housing as determined by the Housing Director and in consideration of the City's Analysis of Impediments or Assessment of Fair Housing; or
  - (4) The development is within one half-mile of a planned local public transit route documented in a plan approved by the Capital Metropolitan Transportation Authority.
- (E) An applicant may not deny a prospective tenant affordable rental housing based solely on the prospective tenant's participation in the Housing Choice Voucher Program or in any other housing voucher program that provides rental assistance.



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**23-3 E-4030 Affordability Requirements**

- (A) To be eligible for the S.M.A.R.T. Housing Program a housing development must comply with the requirements of this Section.
- (1) For ownership dwelling units within the Geography 1 (see Subsection 23-3E-1040(B)(1) (Location)):
- (a) Five percent of dwelling units must be available to households at or below 80 percent of the MFI; and
- (b) An additional five percent of dwelling units must be available to households at or below 100 percent of the MFI.
- (2) For ownership dwelling units within Geography 2 (see Subsection 23-3E-1040(B)(1) (Location)), 10 percent of dwelling units must be available to households at or below 80 percent of the MFI.
- (3) For rental dwelling units, 10 percent of dwelling units must be available to households at or below 60 percent of the MFI.

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**23-3 E-4040 Required Affordability Period**

- (A) To be eligible for the S.M.A.R.T. Housing Program, unless a longer term is required by law, private agreement, or another provision of this Code, all reasonably-priced dwelling units in a S.M.A.R.T. Housing development must remain reasonably-priced for the following affordability periods commencing on the date the final Certificate of Occupancy is issued:
- (1) For ownership dwelling units, a period of at least 99 years; and
- (2) For rental dwelling units, a period of at least 40 years.
- (B) If a reasonably-priced dwelling unit within a S.M.A.R.T. Housing development is converted from a rental unit to an owner-occupied dwelling unit during the applicable affordability period, the dwelling unit shall be subject to the affordability period and affordability requirements applicable to an owner-occupied dwelling unit. The new affordability period begins on the date that the converted dwelling unit is available for owner occupancy.
- (C) If the development does not comply with the requirements to maintain the applicable percentage of dwelling units as reasonably-priced for the duration of the applicable affordability period, the developer shall reimburse the City for all fees waived plus a penalty charge equal to the total amount of fees waived.
- (D) The applicant is required to execute an agreement, restrictive covenant, or other binding restriction on land use that preserves affordability in compliance with the S.M.A.R.T. Housing Program.

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**23-3 E-4050 Fee Waivers and Exemptions**

(A) A developer is eligible for a 100 percent waiver of the fees if the Housing Director determines that the housing development meets the requirements of Section 23-3E-4030 (Affordability Requirements) and Section 23-3E-4040 (Required Affordability Period). The fees that can be waived include:

- (1) Construction Inspection Fee;
- (2) Development Assessment Fee;
- (3) Traffic Impact Analysis Fee;
- (4) Traffic Impact Analysis Revisions Fee;
- (5) Regular Zoning Fee;
- (6) Interim to Permanent Zoning Fee;
- (7) Miscellaneous Zoning Fee;
- (8) Zoning Verification Letter Fee;
- (9) Board of Adjustment Fee;
- (10) Managed Growth Agreement Fee;
- (11) Preliminary Subdivision Fee;
- (12) Final Subdivision Fee;
- (13) Final Without Preliminary Subdivision Fee;
- (14) Miscellaneous Subdivision Fee;
- (15) Consolidated Site Plan Fee;
- (16) Miscellaneous Site Plan Fee;
- (17) Site Plan Revision Fee;
- (18) Site Plan - Construction Element Fee;
- (19) Building Review Plan Fee;
- (20) Building Permit Fee;
- (21) Electric Permit Fee;
- (22) Mechanical Permit Fee;
- (23) Plumbing Permit Fee;
- (24) Concrete Permit Fee;
- (25) Demolition Permit Fee;
- (26) Electric Service Inspection Fee;
- (27) Move House Onto Lot Fee;
- (28) Move House Onto City Right-of-Way Fee; and
- (29) Neighborhood Plan Amendment Fee.

(B) Additional fees that may be waived by separate ordinance or agreement include:

- (1) Austin Water Utility Capital Recovery Fees;
- (2) Parkland Dedication Fees;
- (3) Austin Energy Line Extensions;
- (4) Transportation Mitigation Fees; and
- (5) Service Connections to certain lots.

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**23-3 E-4060 Reporting, Compliance, and Enforcement**

(A) The Housing Director shall establish reporting, compliance, monitoring, and enforcement mechanisms and procedures for implementing the S.M.A.R.T. Housing Policy and Program.

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# Division 23-3E-5: Additional Affordable Housing Incentives

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## 23-3 E-5010 Additional Affordable Housing Incentives

- (A) An applicant who provides income-restricted affordable units as verified by the Housing Director may request a parking adjustment in compliance with Article 23-4D (Specific to Zones) from the Planning Director to be made prior to Site Plan approval.
- (B) For developments that meet S.M.A.R.T. Housing Program criteria (Sections 23-3E-4020, 23-3E-4030, and 23-3E-4040), the following incentives apply:
  - (1) This Subsection applies in the R1B, R1C, R2A, R2B, R2C, R2D, R2E, R3B, R3C, and R3D zones:
    - (a) The maximum impervious cover is 50 percent if the Watershed Director determines that the development will not result in additional identifiable adverse flooding on other property, unless lots in R1B, R1C, R3B, or R3C zones can achieve 55 percent impervious cover as allowed under Sections 23-4D-2090 (Residential R1B Zone), 23-4D-2100 (Residential R1C Zone), 23-4D-2170 (Residential R3B Zone) and 23-4D-2180 (Residential R3C Zone).
    - (b) A noncomplying structure may be replaced with a new structure if the new structure does not increase the existing degree of noncompliance with yard setbacks.
  - (2) For duplex uses on lots that are at least 5,000 square feet, a maximum of eight bedrooms is permitted.
  - (3) Where accessory dwelling units are allowed, the accessory dwelling unit may not exceed a gross floor area of 1,100 square feet. All of the allowed gross floor area may be on the second story, if any.

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# Division 23-3E-6: Affordability Impact Statements

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## 23-3 E-6010 Affordability Impact Statements

- (A) **Administration.** The Housing Director may adopt and implement guidelines or rules to implement this Division.
- (B) **Proposed Changes Impacting Affordability.** A new ordinance or rule, or a change to an existing ordinance, rule, or Comprehensive Plan that may impact housing affordability may not be approved unless the Housing Director has prepared an Affordability Impact Statement (AIS) for the proposed regulation or change.
  - (1) The sponsoring department initiating the proposed change or adoption of a new ordinance or rule must submit an Affordability Impact Statement Request Form and provide a copy of the draft ordinance or rule in legislative format to the Housing Director.
  - (2) An AIS must accompany any proposed amendments or new regulations seeking City Board, Commission, or Subcommittee recommendations.
  - (3) If changes that impact housing affordability are made to the draft ordinance or rule during the external stakeholder process, the sponsoring department must submit a new Affordability Impact Statement Request Form to the Housing Director with an updated draft of the proposed ordinance or rule so that the Housing Director may update the AIS prior to the item appearing before Council.
  - (4) If an AIS shows a potentially negative overall impact on housing affordability, the proposed change may only go forward after approval from the City Manager.
  - (5) An AIS is not required for Council adoption of annexations, budgets, or budget amendments, except for those that increase development fees that may impact housing affordability, which are not otherwise waived.

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