

AN ORDINANCE 2006-02-16-0241

**AMENDING CHAPTER 34, WATER AND SEWERS,  
AND CHAPTER 35, UNIFIED DEVELOPMENT CODE,  
OF THE CITY CODE OF SAN ANTONIO, TEXAS  
REGARDING RECOGNITION OF RIGHTS UNDER  
CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT  
CODE AND COMMON LAW FOR PROJECTS;  
IMPLEMENTING FAIR NOTICE OF A PROJECT AND  
PERMIT SOUGHT; ADOPTING CONFORMING  
AMENDMENTS AND APPORTIONING CURRENT  
FEES.**

**WHEREAS**, the San Antonio City Council reenacted the Unified Development Code (UDC) on September 22, 2005; and

**WHEREAS**, Chapter 245 of the Texas Local Government Code was amended by the State Legislature during its 79<sup>th</sup> Session; and

**WHEREAS**, the City Council desires to amend the UDC to conform with such legislative enactments and to also provide clarity, consistency, and certainty to the process for obtaining rights under Chapter 245 and common law for projects; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Code of San Antonio, Texas is hereby amended by adding the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

**SECTION 2.** Chapter 34, Water and Sewers, of the City Code of San Antonio, Texas is hereby amended as follows:

Chapter 34, Article VI, Section 34-908 is amended by adding the definition of project as follows:

**34-908      *Definitions***

*Project:* Project shall have the meaning contained in Chapter 35 of this Code.

Chapter 34, Article VI, Section 34-910 is amended as follows:

### **34-910 Letter of certification required.**

No development shall be undertaken in connection with any project on any land, tract, parcel, or lot which is within the boundaries of the Edwards Aquifer Recharge Zone and which is subject to regulation by this Division unless and until a Letter of Certification is issued by the resource protection and compliance department watershed protection and management departments of the San Antonio Water System to the owner or developer of such property. A Letter of Certification issued under this Division shall expire if progress towards completion of the project has not been demonstrated ~~not utilized~~ within three years from the date the Letter of Certification was issued.

Chapter 34, Article VI, Section 34-925 is amended as follows:

### **34-925 Pollution Prevention Criteria**

For the purpose of regulating activities within the areas regulated by this Division, while acknowledging and respecting the interests of property owners, projects ~~properties~~ in the area affected by this Division shall be classified according to the following three Categories:

CATEGORY 1: A project for which an application for a permit, as defined in Chapter 245, Texas Local Government Code, has been filed, before the effective date of this Division. Any property which prior to the effective date of this Division was the subject of a valid permit as defined in Section 481.142 of the Texas Government Code, and to which Sections 481.141 et seq. of said code apply. This shall include, but is not limited to, any of the following:

- (a) ~~— A POADP; or~~
- (b) ~~— A plat or plat application~~

CATEGORY 2: A project located on Any property within the corporate limits of the City of San Antonio, that is not in Category 1;

CATEGORY 3: A project located on All property within the Edwards Aquifer Recharge Zone which is within the extraterritorial jurisdiction of the City of San Antonio, and which does not meet the requirements of Category 1 or Category 2, above.

Chapter 34, Article VI, Section 34-926 is amended as follows:

### **34-926 Pollution Prevention Criteria in Category 1.**

(a) Unless otherwise specified in this Division, the development criteria and regulations of the City of San Antonio which were in effect at the time the original application for the permit was filed pursuant to, and as defined by Chapter 245, Texas Local Government Code, as defined by Section 481.141 et seq. of the Government Code, shall govern the development of a project that is that property classified as Category 1 because of the filing of said application.

(b) A project ~~Property~~, which satisfies the Category 1 requirements of Section 34-925 because it was the subject of an application submitted or permit issued before the effective date of this Division, will be automatically placed in its appropriate Category after the application or permit expires pursuant to the laws in effect at the time the application was submitted or the permit was issued.

(c) To the extent allowed by law, if a project classified as the valid permit, as defined by Section 481.142 of the Texas Government Code, which caused the property to be placed in Category 1 is substantially altered, then the Category 1 status of such project, or portion thereof, affected by the following action(s) shall be lost, unless such project property is classified in Category 1 by reason of another valid permit, and the project shall be appropriately classified pursuant to Section 34-925.

In applying this provision "substantially altered" shall be considered as any action of the following actions if done through the initiative of the property owner or the property owner's agent provided however that "substantially altered" does not include those actions classified as minor amendments in Section 35-412 and Section 35-715 of Chapter 35 of this Code. unless it is shown that the substantial alteration(s) do not increase the potential for degradation as that term is defined herein:

- (1) ~~Change in arterial or collector roadways;~~
- (2) ~~Change in land use;~~
- (3) ~~Change in drainage plan;~~
- (4) ~~Change in projected gross impervious cover; or~~
- (5) ~~Change in land use intensity.~~

(d) A developer may voluntarily go to Category 2 or 3 as appropriate, with the ability to transfer platting fees to the new Category 2 or 3 project development.

(e) If a project is classified as Category 1 under Section 34-925, then the San Antonio Water System shall, when commenting to the Texas Commission on Environmental Quality TNRCC regarding an application for a water pollution abatement plan (WPAP), recommend that the WPAP include, at a minimum, the elements contained in Section 34-911 of this division.

Chapter 34, Article VI, Section 34-930 is amended as follows:

### **34-930      *Pollution Prevention Criteria in Category 2***

The following criteria and restrictions shall apply to all regulated activity on a project that is classified property categorized as Category 2 by Section 34-925 of this Division:

- (a) Single-family residential. The projected impervious cover for all single-family residential development of a Category 2 project shall not exceed a maximum of 30% gross impervious cover.
- (b) Multi-family residential. The projected impervious cover for multifamily residential development of a Category 2 project shall not exceed a maximum of 50% gross impervious cover.
- (c) Commercial. The projected impervious cover for commercial development of a Category 2 project shall not exceed a maximum of 65% gross impervious cover.

\* \* \* \* \*

Chapter 34, Article VI, Section 34-935 is amended as follows:

**34-935      *Pollution Prevention Criteria in Category 3***

The following criteria and restrictions shall apply to all regulated activity on a project that is classified properties categorized as Category 3 by Section 34-925 of this Division:

- (a) Single-family residential. The projected impervious cover for all single-family residential development of a Category 3 project shall not exceed a maximum of 15% gross impervious cover, or the maximum impervious cover specified in accordance with Subsection (d) of this Section.
- (b) Multi-family residential. The projected impervious cover for multi-family residential development of a Category 3 project shall not exceed a maximum of 15% gross impervious cover, or the maximum impervious cover specified in accordance with Subsection (d) of this Section.
- (c) Commercial. The projected impervious cover for commercial development of a Category 3 project shall not exceed a maximum of 15% gross impervious cover, or the maximum impervious cover specified in accordance with Subsection (d) of this Section.

\* \* \* \* \*

Chapter 34, Article VI, Section 34-970 is amended as follows:

**34-970      *Best Management Practices (BMPs)***

All development plans for single family residential development of Category 2 or 3 projects property, as identified in Section 34-925, which are submitted to the Watershed Protection & Management Department, as required by this Division, shall contain sufficient planned BMP features to allow for the proper conveyance, storage and release of runoff, to adequately reduce peak stormwater discharge, and remove pollutants in a manner and to a degree which is acceptable to the Watershed Protection & Management Department. BMP's are features which provide effective integration of stormwater management systems, with appropriate combinations of landscape conservation, enhancement, structural controls, schedules of activities, prohibitions of practices, maintenance procedures and other management practices which provide an optimum way to convey, store, treat and release runoff, so as to reduce peak discharge, remove pollutants, and enhance the environment. All development plans submitted shall, at a minimum, incorporate all of the following BMP'S:

\* \* \* \* \*

**SECTION 3.** Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas is hereby amended as follows:

Chapter 35, Article IV of the City Code of San Antonio, Texas is hereby amended by adding a new Section 35-410 as follows:

**35-410      *Fair Notice***

The purpose of this section is to provide standard procedures for an applicant to accrue rights under Chapter 245 of the Texas Local Government Code.

**(a) Applicability**

The provisions of this section apply to any application for a permit by which an applicant desires to accrue rights under Chapter 245 of the Texas Local Government Code. The provisions of this section do not apply where an applicant does not desire to accrue rights under Chapter 245 of the Texas Local Government Code.

**(b) Initiation**

A Fair Notice Form shall be submitted in the form prescribed in Appendix "B."

**(c) Completeness review**

The Fair Notice Form will be reviewed for completeness in accordance with Section 35-402.

**(d) Decision**

The director of development services shall then review the application for completeness to ascertain that all required items and associated information for administrative review purposes have been submitted.

**(e) Approval Criteria**

To accrue rights under Chapter 245 of the Texas Local Government Code, an applicant shall submit a complete application for a required permit to the director within 45 days of the submission of the Fair Notice Form.

**(f) Subsequent Applications**

Not Applicable

**(g) Amendments**

A Fair Notice Form shall not be amended. If a Fair Notice Form is amended, rights shall accrue as of the date of the amendment

**(h) Scope of Approval**

Applications declared complete within 45 days shall obtain rights under Chapter 245 of the Texas Local Government Code effective on the date of the initial application and Fair Notice Form. If an application is incomplete, the director will give written notice to the applicant identifying the missing/incomplete items within 10 business days. Any application resubmitted within the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of initial submission. Any application resubmitted after the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of the resubmission.

***(i) Recording Procedures***

A Fair Notice Form is not recorded.

Chapter 35, Article IV, Section 35-431 of the City Code of San Antonio, Texas is hereby amended as follows:

***35-431 Application for Plat Identification Number/ Letters of Certification***

\* \* \* \* \*

***(b) Initiation***

\* \* \* \* \*

***(3) Copies to Development Services Director.***

A copy of each request for a an Application for Plat Identification Number/Letter of Certification shall be filed with the director of development services. The request for a an Application for Plat Identification Number/Letter of Certification shall contain the information ~~be in the form~~ prescribed in Appendix "B". In order to track the application, the director of development services will ~~may~~ assign a plat identification number ~~tentative tracking number~~ for the letters ~~letter~~ of certification in the event that an application for subdivision plat approval is filed.

***(4) Plat Number***

All Applications for Plat Identification Number/Letters of Certification submitted for technical completeness review shall be subject to the fair notice provisions of this Chapter adopted in accordance with Chapter 245 of the Local Government Code. When a tentative plat ID number is initially requested, applicants shall pay the total Application for Plat Identification Number/Letters of Certification processing fee in connection with the request for a tentative plat ID number and submit a Fair Notice Form. The Planning Commission processing fee shall be remitted at the time a plat application submittal is deemed complete.

To accrue rights under Chapter 245 of the Texas Local Government Code, an applicant shall submit a complete Plat Identification Number/Letters of Certification Application to the director within 45 days of the submission of a Fair Notice Form and assignment of a tentative plat ID number. The director of development services shall then review the application for completeness to ascertain that all required items and associated information for administrative review purposes has been submitted. Plat Identification Number/Letters of Certification Applications declared complete within 45 days shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of the tentative plat ID number assignment. If an application is incomplete, the director will give written notice to the applicant identifying the missing/incomplete items within 10 business days. Any application resubmitted within the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of initial submission. Any application resubmitted after the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of the resubmission.

***(5) Fees***

At the time an application for a plat number is submitted, the applicant shall pay the City of San Antonio the platting fees specified in Appendix "C" in the manner described in subsection (b)(4).

Chapter 35, Article VII, Division 2, Section 35-711 is amended as follows:

**35-711      Recognition of Rights Derived From Common Law,  
Statutory and Consent Agreement Rights**

**(a)      Applicability**

The provisions of this section apply to any application for development approval in which the applicant claims an exemption from any provision of this code chapter based on common law or statutory vested rights. ~~Neither an expired nor a withdrawn plat application may be relied upon as a permit application for the assertion of vested, development or any other right or claim. If after the expiration or the withdrawal of a plat application the applicant wishes future plat approval of the subject property, a new plat application shall be filed, new application fees shall be required and a new plat number shall be assigned.~~

**(b)      Criteria**

**(1)      Common Law Vested Rights.**

Common law vested rights may shall be acknowledged by the director of development services after consultation with the city attorney if the applicant for common law vested rights does not demonstrate entitlement to statutory vested rights as provided in Section 35-712 subsection (2), below. A request for such an acknowledgement must include a letter stating the grounds for the entitlement to common law rights and specifying the relevant case law upon which the applicant relies, documents establishing the criteria listed below and together with an application review fee in the amount established by ordinance as set forth in Appendix C of one hundred forty five dollars (\$145.00) to offset the city's costs. The director of development services may request additional relevant material prior to issuing the acknowledgement. The applicant for common law vested rights must show compliance with the following criteria for the specific project to acquire such rights.

- A.      In reliance upon properly issued permits or approvals the applicant made ~~make~~ substantial financial expenditures ~~commitments~~ or assumed substantial financial obligations within the purview of the activities authorized by said permit or approval; and
- B.      The applicant has proceeded in good faith, and no approvals or permits have lapsed or been revoked; and
- C.      The applicant has established any other factor that ~~which~~ may establish vested rights under state ~~State~~ or federal ~~Federal~~ law.

**(2)      Statutory vested rights.**

~~No vested rights determination claiming entitlement to approval of an application for development approval shall be approved or issued unless the applicant has demonstrated compliance with the following criteria for statutory vested rights, unless the applicant demonstrates entitlement to common law vested rights as provided in subsection (2), above:~~

- A. ~~The applicant used its property or filed an application as provided in Texas Local Government Code § 43.002 prior to annexation, and that the regulations against which vested rights are claimed are not subject to an exemption as provided in Texas Local Government Code § 43.002(e).~~
- B. ~~The applicant filed an application as provided in Texas Local Government Code chapter 245 prior to adoption of the regulations against which vested rights are claimed, that the regulations against which vested rights are claimed are not subject to an exemption as provided in Texas Local Government Code § 245.004 and that the project has not become dormant as defined in Texas Local Government Code § 245.005 and this chapter.~~

**(c) Consent Agreements**

~~Any applicant for a vested rights determination may apply for consent agreement approval provided that the requirements of subsection (d) of this section are satisfied or the required approval is for one (1) or more, but less than all phases of the proposed development. An application for consent agreement approval may be approved subject to compliance with a consent agreement. An Application for approval of a consent agreement approval may be filed concurrent with an Application for a vested rights determination, or at any time prior to a final decision relating to an Application for a vested rights determination by the city attorney or the city.~~

**(d) Terms and conditions**

~~A consent agreement shall be signed by the city attorney and the applicant and shall include the following terms and conditions:~~

- ~~(1) A legal description of the subject property and the names of the legal and equitable owners;~~
- ~~(2) The duration of the consent agreement and the conditions that will result in revocation;~~
- ~~(3) The uses permitted on the property, including population densities and/or building intensities and height;~~
- ~~(4) A description of the public facilities that will service the proposed development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure that public facilities are available concurrent with the impacts of the development;~~
- ~~(5) A description of any preservation or dedication of land for public purposes;~~
- ~~(6) A description of all development approvals, permits, or other local or State approvals needed for the proposed development;~~
- ~~(7) A finding that the proposed development is consistent with the Master Plan and the relevant provisions of this chapter;~~
- ~~(8) A description of any conditions, terms, restrictions, or other requirements determined to be necessary for the preservation and protection of the public health, safety, or welfare;~~

- ~~(9) — A statement indicating that the omission of a limitation or restriction shall not relieve the Applicant of the necessity of complying with all applicable local, state and federal laws;~~
- ~~(10) — A phasing plan indicating the anticipated commencement and completion date of all phases of the proposed development; and~~
- ~~(11) — A statement that the city attorney shall review progress pursuant to the consent agreement at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the consent agreement.~~

**(e) Failure to Comply With Consent Agreement**

If the city finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the consent agreement, the consent agreement may be revoked or modified by the city after a public hearing which has been noticed by publication, and for which notice has been expressly provided to the applicant.

Chapter 35, Article VII, Division 2, Section 35-712 is amended as follows:

**35-712 Recognition of Vested Rights Derived From Texas  
Local Government Code Chapter 245**

**(a) Purpose**

(1) This section provides a methodology for the registration of permits, and permit applications, with the department of development services so that a determination can be made as to whether the permit, or permit application is one that would afford a project with the rights “vested rights” as provided in Chapter 245 and § 43.002 of the Texas Local Government Code. The purpose for such registration and determination is to assist city staff in their review of the applicability of Chapter 245 or § 43.002 to a particular project.

(2) This section shall not apply to a claim of right under common law, a federal or state statute, other than Chapter 245 of the Texas Local Government Code or § 43.002, or the state or federal constitutions, or to the types of ordinances, or other governmental action, enumerated in the Texas Local Government Code § 245.004. Any claim of right made under some law or authority, other than Chapter 245 or § 43.002, should be made to the director of development services in accordance with the provisions of Section 35-711 or Section 35-713 writing. For such claims, the The director of development services shall advise the city attorney of the claim. The City Attorney may who shall make a recommendation regarding determination of the validity of the claim and the director shall make a determination within 20 working days of its receipt, by the city. Additionally, as provided in Subsection (g) of this section, this section shall not apply to the types of ordinances, or other governmental action, enumerated in VTCA Local Government Code § 245.004 or exempt from § 43.002.

(3) No determination claiming entitlement to statutory rights under Chapter 245 of the Texas Local Government Code shall be approved or issued unless the applicant has demonstrated compliance with the following criteria for statutory rights:

A. The applicant has filed an application as provided in the Texas Local Government Code, Chapter 245 prior to the adoption of the regulations against which rights are claimed; and

B. The regulations against which rights are claimed are not subject to an exemption as provided in Texas Local Government Code § 245.004; and

C. The project has not become dormant as defined in Texas Local Government Code § 245.005 and this chapter.

**(b) Vested Rights Recognition of Statutory Rights Process**

**(1) Initiation.**

An application may be made to the director of development services for a determination recognition of vested rights for a particular project by completion of a form provided by the development services department that indicates which permit or permits are being relied on by the applicant for establishment of vested rights. The applicant requesting for vested rights recognition of rights shall provide the department of development services with two (2) copies of a completed application together with a permit application review fee in the amount established by ordinance as set forth in Appendix C of one hundred forty-five dollars (\$145.00) and two (2) copies of any documents on which the applicant is relying to establish vested rights.

**(2) Review and Approval.**

After receiving an application for vested rights recognition, the department of development services shall review the application and approve, deny or request additional information to be provided for consideration of the application within twenty (20) working days. The director of development services may request a recommendation from the City Attorney. If Should the permit that ~~which~~ is the basis for the recognition of rights ~~vested rights~~ recognition, have ~~has~~ been issued by a regulatory governmental agency other than the city, the department of development services shall request the office of the city attorney to determine whether the permit establishes rights under Chapter 245. In the event that the department of development services does not respond to an application for a determination of vested rights within twenty (20) working days, the application will be considered denied. Provided, however, the time period may be extended upon the written request of the applicant. Upon review of the application, if the department of development services finds that the applicant has provided sufficient information to establish that one (1) or more permit(s) exists on a project, ~~they shall issue a certificate shall be issued~~ to the applicant recognizing vested rights for the project. The certificate recognizing such vested rights shall be dated and signed by the director or his designee ~~individual reviewing the application.~~ ~~The director of development services shall also review all certificates prior to issuance.~~ The certificate shall also clearly indicate the term and conditions (indicated above) required for the continuance of the vested rights being recognized. In the event the department of development services requests additional information for consideration of an application, the applicant shall be notified in writing within the required time period of specifically what information must be submitted in order to complete the review of the application. Should the application be denied, the department of development services shall enumerate in writing the reason(s) ~~any and all reasons~~ for such denial, which shall be delivered to the applicant within the time period allowed for review.

**(3) Basis for Statutory Permit Rights**

The following criteria will be used by the city in determining the existence of rights for projects initiated after September 1, 1997. The following permits may be relied on by a property owner or developer to establish permit rights for a project ~~property~~ that is the subject of the permit. Provided, however, a minor plat that plats only easements shall not confer any permit rights. The permit rights acquired in reliance on one (1) of the types of

permits indicated below will expire in five (5) years unless the action required to maintain permit rights is taken within the time frame indicated for each permit type and the project does not become dormant in accordance with Chapter 245 of the Texas Local Government Code and this chapter. A property owner or developer may take advantage of changes to this chapter that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

A. Master Development Plan (MDP)/Preliminary overall area development plan (POADP)

Rights under Chapter 245 of the Texas Local Government Code Permit rights will be recognized on the project property which is the subject of a MDP/POADP that has been approved by the city. A property owner or developer may elect to continue a project under the City Code provisions in effect on September 1, 1997 or to take advantage of changes to this chapter that enhance or protect the project without forfeiting any rights under this chapter provided that Fair Notice is provided with a MDP/POADP application in accordance with this chapter or by requesting recognition of rights for an existing and valid MDP/POADP and providing Fair Notice in accordance with this chapter planning department. The permit rights recognized for projects property located within with an approved MDP/POADP will expire unless a final plat is approved within two (2) years ~~eighteen (18) months~~ from the approval of the MDP/POADP that plats, at least eight (8) percent of the net area of the POADP area or an expenditure of at least five hundred thousand dollars(\$500,000.00) in project expenses has been made if the master development plan is one thousand (1,000) acres or less or an expenditure of at least one million dollars (\$1,000,000.00) has been made if the master development is more than one thousand (1,000) acres that requires at least five hundred thousand dollars (\$500,000.00) in infrastructure expenses if the POADP is one thousand (1,000) acres or less or at least one million dollars (\$1,000,000.00) if the POADP is more than one thousand (1,000) acres.

Further, the permit rights for projects property within an approved MDP/POADP will expire unless fifty (50) percent of the net area with the approved MDP/POADP is the subject of final plats or development within ten (10) years from the date of approval of the MDP/POADP. For a POADP existing prior to September 1, 1997 that meets the requirements of Subsection 35-1027(j) of the 1987 UDC, the rights for projects will expire ten (10) years from the date of approval of the MDP/POADP or September 25, 2007, whichever is later. The remaining fifty (50) percent must obtain final plat approval or be developed within ten (10) years after the initial fifty (50) percent of the net area within the MDP/POADP has been platted or developed unless ~~Unless~~ specific provisions to the contrary exist in an individual ordinance or city code provision, the filing of a minor amendment to a an-amending MDP/POADP, a plat or replat will not result in a loss of permit rights to the entire MDP/POADP, provided that the required area of acreage within the MDP/POADP platted or value of project infrastructure expenses do not fall below the amounts indicated above as a result of the minor amendment, plat, or replat. A plat or replat that changes the project within a particular area of an MDP/POADP will cause rights for that area to terminate.

B. Plat Applications

Rights under Chapter 245 of the Texas Local Government Code Permit rights will be recognized for the project on the property that is the subject of an a application for a Plat Identification Number/Letters of Certification plat application that has been filed with the department of development services city planning

~~department~~, provided all necessary platting fees have been paid. The rights recognized for ~~a project property~~ located within such a plat application will expire unless the plat application is heard by and approved by the director of ~~development services planning~~ or the planning commission within ~~two years~~ ~~eighteen (18) months~~ from the date the ~~initial plat application~~ and provided that Fair Notice is provided with the plat application in accordance with this chapter ~~city planning department~~. Neither an expired nor a withdrawn plat application may be relied upon as a permit application for the assertion of statutory rights under Chapter 245 of the Texas Local Government Code or any other right or claim based on common law. If after the expiration or the withdrawal of a plat application the applicant wishes future plat approval of the subject property, a new plat application shall be filed, new application fees shall be required and a new plat number shall be assigned.

C. Plats

Rights under Chapter 245 of the Texas Local Government Code ~~Permit rights~~ will be recognized for projects associated with ~~on~~ the property which is the subject of a plat that has been approved by the city planning commission or director of ~~development services~~ provided that Fair Notice is provided with the plat application in accordance with this chapter ~~planning~~. The ~~permit rights~~ recognized for ~~a project property~~ located within an approved plat will expire unless the plat is recorded ~~in~~ ~~in~~ the Bexar County Deed Records within three (3) years from the date of approval by the city planning commission or director of ~~development services~~ planning.

D. Building Permits

A building permit may be relied on as a basis for rights under Chapter 245 of the Texas Local Government Code ~~permit rights~~ for ~~projects property~~ identified in the site plan submitted to the city as part of the building permit application provided that Fair Notice is provided with the permit application in accordance with this chapter. However, rights that are based ~~base~~ on a building permit will expire unless construction authorized by the building permit is begun within six ~~six~~ (6) months from the date the building permit is issued.

E. Rights under Chapter 245 of the Texas Local Government Code ~~Permit Rights Conferred~~

Rights under Chapter 245 of the Texas Local Government Code ~~Permits rights conferred by~~ Rights accrued under this section shall not extend beyond the time periods prescribed herein except by the granting of a variance from the time limits as provided herein. Under no circumstances shall the extension of a time limit extend the ~~permit rights~~ conferred herein except through the variance provision of this section.

**(c) Recordation**

The department of development services shall create a file of all certificates issued pursuant to this provision that will be available to the public during regular business hours. At a minimum the file will ~~should~~ contain the original application and copies of all certificates issued for a three calendar year period. The file shall and should be reviewed annually to remove certificates that have expired more than three (3) years old. Electronic copies of Certificates more than three (3) years old shall be maintained in accordance with statutory requirements and made available in conformance with the Public Information Act.

**(d) *Vested Rights Recognition Process Appeal***

In the event an applicant for recognition of ~~vested~~ rights is aggrieved by an action taken regarding the recognition of those rights or the application of the above requirements, the applicant may appeal the decision of the director of the department development services staff to the planning commission by filing a request for appeal with the director of development services within fifteen (15) calendar days from the date the applicant is notified of the adverse decision or action taken under these requirements. The application for appeal shall be made in writing and shall contain the applicant's rationale for requesting the appeal together with payment of an application review fee in the amount established by ordinance as set forth in Appendix C. The director of development services shall place the appeal on the agenda of the planning commission and the planning commission shall hold a hearing on the appeal and make its ruling within forty-five (45) days from the date the request for appeal was filed. If the planning commission denies all or part of the relief requested in the appeal, the applicant may make a final appeal to the city council by filing a notice of final appeal in writing together with payment of an application review fee in the amount established by ordinance as set forth in Appendix C of seventy-five dollars (\$75.00) to offset the city's costs with the office of the city clerk no later than the tenth (10) day following the party's receipt of the written decision of the planning commission from which the final appeal is brought. If the planning commission approves all or part of the relief requested in the appeal, the City Manager or her designee may make a final appeal to the city council by filing a notice of final appeal in writing with the city clerk no later than the tenth (10) day following the decision of the planning commission from which the final appeal is brought. The city clerk shall schedule the hearing of the final appeal at the earliest regularly scheduled meeting of the city council that will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the city council shall be final.

**(e) *Variance***

An individual, or business entity, that has ~~vested~~ rights may request an extension of a variance from the time limit required action, or term, that would otherwise cause the ~~vested~~ rights to expire. An individual requesting a variance must make written application to the director of development services and pay a variance application fee in the amount established by ordinance as set forth in Appendix C of one hundred forty five dollars (\$145.00). The request for variance must identify the specific provisions for which a variance is being requested and the reasons the applicant feels justify the granting of the variance. The director of development services shall review the application for variance and provide a written recommendation with regard to whether the variance should be granted, conditionally granted or denied to the planning commission within thirty (30) days from the date the application or variance is filed. In the event the planning commission fails to make a ruling on the variance within sixty (60) days from the date the application for variance is filed, the application for variance shall be deemed denied. Provided, however, the time period may be extended upon the written request of the applicant. In order to grant a variance from the provisions of this section, the planning commission must find that:

- (1) The applicant would suffer a hardship in the absence of a variance that is not the result of the applicant's own negligence; and
- (2) The applicant has been actively attempting to pursue and complete development of the project that is the subject of the ~~vested~~ rights; and
- (3) Compliance with rules and regulations passed after the recognition of ~~vested~~ rights would cause a substantial economic hardship to the developer/property owner that would preclude the capability of completing the project in a reasonable and prudent manner.

**(f) Variance Appeal**

If the planning commission denies all or part of the relief requested in a request for variance, the applicant may make an appeal to the city council by filing a notice of appeal in writing together with a payment established by ordinance as set forth in Appendix C of seventy five dollars (\$75.00) to offset the city's costs with the office of the city clerk for the city no later than the tenth (10) day following the party's receipt of the written decision of the planning commission from which the final appeal is brought. If the planning commission approves all or part of the relief requested in a request for variance, the City Manager or her designee may make an appeal to the city council by filing a notice of appeal in writing with the city clerk no later than the tenth (10) day following the decision of the planning commission from which the final appeal is brought. The city clerk shall schedule the hearing of the appeal at the earliest regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the city council shall be final.

**(g) Exemption From Vested Rights**

The types of ordinances enumerated in the Texas VTCA Local Government Code § 245.004 are exempt from this section and will apply to a project or development regardless of the effective date of the ordinance or the existence of ~~vested~~ rights for the project.

- (1) Future ordinances: Any ordinance that: concerns the development of real property and is adopted after the adoption of this chapter, which incorporates this section into the city code of ordinances, may specifically state whether it is the type of ordinance that is exempted by § 245.004. However, the absence of such a statement shall not be determinative as to whether the ordinance is or is not exempted.
- (2) Existing ordinances: This section shall not be applicable to any ordinance that: a) concerns the development of real property; b) was adopted prior to the adoption of this chapter; and c) is exempted by § 245.004 from the protection provided by Chapter 245.
- (3) Determination by city attorney: Should a question arise as to whether an ordinance is exempted from Chapter 245, the director of development services shall request an opinion from the office of the city attorney.

**(h) Duration**

This section shall not extend the time of validity for any permit. Any rights recognized by the application of this section shall not extend beyond the time periods prescribed for the validity or the permit or permits that were submitted for recognition except by the granting of a variance from the time limit as provided herein.

**(i) Voluntary Compliance**

Nothing herein would prohibit the voluntary compliance with any future ordinance, regulation or incentive.

**(j) Previously issued Certificates**

Nothing herein shall affect the validity of any ~~vested~~ right which was recognized pursuant to Section 35-1027 inserted into the UDC by Ordinance No. 86715, passed and approved September 25, 1997.

**(k) Chapter 245 of Texas Local Government Code Adopted**

Chapter 245 of the Texas Local Government Code, as adopted in 1999 by the 76th Legislature, regular session is hereby adopted and incorporated by reference herein. Should Chapter 245 be repealed by the Legislature it shall remain effective as part of this code for one year from the date of such repeal. During said period city council shall take any action it deems necessary to provide municipal protection for ongoing projects from the affects of unanticipated subsequent regulations.

Chapter 35, Article VII, Division 2 is amended by adding a new Section 35-713 as follows:

**35-713 Recognition of Rights by Consent Agreement**

**(a) Consent Agreements**

Any applicant for a ~~vested rights~~ determination of rights under Chapter 245 of the Texas Local Government Code may apply for a consent agreement approval provided that the requirements of subsection (d) of this section are satisfied and or the required approval is for one (1) or more, but less than all phases of the proposed development. An application for a consent agreement approval may be approved subject to compliance with subsection (b) a consent agreement. An Application for approval of a consent agreement must approval may be filed concurrent with or subsequent to an application for a ~~vested rights~~ determination of statutory rights, or at any time prior to a final decision relating to an Application for a ~~vested rights~~ determination by the city attorney or the city.

**(b) Terms and conditions**

A consent agreement shall be signed by the city attorney and the applicant and shall include the following terms and conditions:

- (1) A legal description of the subject property and the names of the legal and equitable owners;
- (2) The duration of the consent agreement and the conditions that will result in revocation;
- (3) The uses permitted on the property, including population densities and/or building intensities and height;
- (4) A description of the public facilities that will service the proposed development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure that public facilities are available concurrent with the impacts of the development;
- (5) A description of any preservation or dedication of land for public purposes;
- (6) A description of all development approvals, permits, or other local or State approvals needed for the proposed development;

- (7) A finding that the proposed development is consistent with the Master Plan and the relevant provisions of this chapter;
- (8) A description of any conditions, terms, restrictions, or other requirements determined to be necessary for the preservation and protection of the public health, safety, or welfare;
- (9) A statement indicating that the omission of a limitation or restriction shall not relieve the Applicant of the necessity of complying with all applicable local, state and federal laws;
- (10) A phasing plan indicating the anticipated commencement and completion date of all phases of the proposed development; and
- (11) A statement that the city attorney shall review progress pursuant to the consent agreement at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the consent agreement.
- (12) A finding that the consent agreement is intended to resolve a good-faith dispute concerning development rights and applicable regulations without the cost and uncertainty to both parties of litigation.

**(c) Failure to Comply With Consent Agreement**

If the Board of Adjustment finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the consent agreement, the consent agreement may be revoked by the Board of Adjustment after a public hearing which has been noticed by publication, and for which notice has been expressly provided to the applicant.

Chapter 35, Article VII, Division 2 is amended by amending and renumbering Section 35-713 to Section 35-714 as follows:

**35-714 35-713 Dormant Projects**

**(a) Purpose**

The purpose of this section is to provide an expiration date for permits approved prior to this chapter which lack an expiration date, as provided in Texas Local Government Code § 245.005.

**(b) Applicability**

The provisions of this section apply to any permit if as of the first anniversary of the effective date of chapter 245 of the Texas Local Government Code: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project, as defined in Texas Local Government Code § 245.005.

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Commentary: Texas Local Government Code § 245.005 defines "progress towards completion" as any of the following: (1) an application for a final plat or plan is submitted to a regulatory agency; (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project; (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located; (4) fiscal security is posted with a regulatory agency to ensure

performance of an obligation required by the regulatory agency; or (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

**(c) *Expiration of Dormant Projects***

A dormant project, as defined in subsection (b), above, shall expire on one of the following dates, whichever comes later:

- (1) May 11, 2004 (the fifth anniversary of the effective date of Chapter 245 of the Local Government Code), provided that a valid project existed on May 11, 2000 and no progress towards completion of the project has been made by May 10, 2004; or
- (2) The expiration date established by applying the subsection entitled "scope of approval" in the regulations pertaining to the permit as established in Article 4; or
- (3) The expiration date for a permit subject to § 35-711 of this article for any eligible permit as set forth in § 35-711(a).

Chapter 35, Article VII, Division 2 is amended by adding a new Section 35-715 as follows:

**35-715      *Modification to Project or Permit***

**(a)      *Amendment to a Multi-phase project***

A minor amendment to a multi-phase project is defined in Section 35-412(g)(2) of this Code. A determination of rights issued under this chapter or the rights acknowledged and recognized by that determination do not change when a minor amendment is made to a project.

**(b)      *Amendment to a single phase project***

Amendments to a previously approved plan shall be classified as a Minor or Major revision. Minor amendments may be administratively accepted and will not lose the original vesting date. Minor amendments include the following:

- (1) Changes to the timing or phasing of the proposed project provided the use and overall geographic land area remains the same.
- (2) Minor adjustments of building footprint within the boundaries of the site plan provided the use and overall geographic land use remains the same.
- (3) A reduction in the square footage for the proposed building footprint or number of buildings provided the use and overall geographic land use remains the same.
- (4) A decrease in the overall proposed impervious cover.
- (5) Project name change affecting a Master Development Plan or Subdivision Plat.
- (6) To correct a scrivener error as described in 35-441(a)(1) through 35-441(a)(6).
- (7) Changes required by a regulatory agency in the location of easements.

- (8) Changes required by a regulatory agency in the location of stormwater detention facilities.
- (9) Changes required by a regulatory agency in the location of ingress and egress points.
- (10) Changes required by a regulatory agency in the location of drainage areas.
- (11) Changes required by the discovery of previously undiscovered archeological resources/sites or environmental features excluding those sites visible when the project commenced.
- (12) Changes made to increase the preservation ratio of trees for those projects subject to either the 1997 or 2003 Tree Preservation provisions of the UDC.

All other revisions shall be classified as major amendments and shall be processed as a new project submittal.

**(c) Changes caused by government action**

A modification to a project that is required to comply with or conform to an action taken by a government agency does not affect a determination of rights issued under this chapter or the rights acknowledged and recognized by that determination. This subsection does not apply to a modification required or authorized by a change in zoning on all or a portion of the area in the project except as otherwise provided by law.

**(d) Project or permit changes for single phase projects**

Any modification to a project or permit that is not authorized by this section constitutes a new project with respect to the area of the project that is modified. Development of the remainder of a project that conforms to the original project or to a modified project authorized by this section is not a new project, and may continue to be developed in accordance with the determination under this chapter.

**(e) Project change for a single phase project**

Changes in the number of buildings in a project is allowed within five years of filing the initial application and Fair Notice Form provided that such change does not increase the total impervious cover and the change does not increase the total square feet in the footprint of the original project.

Chapter 35, Article VII, Division 2 is amended by adding a new Section 35-716 as follows:

**35-716 Completion of a project or permit**

**(a) Project completion**

- (1) A multi-phase project as defined in section 35-412 shall expire unless a final plat is approved within two (2) years from the approval of the master development plan that plats at least twenty (20) acres or eight (8) percent of the net developable area or an expenditure of at least five hundred thousand dollars(\$500,000.00) in project expenses has been made if the master

development plan is one thousand (1,000) acres or less or an expenditure of at least one million dollars (\$1,000,000.00) has been made if the master development is more than one thousand (1,000) acres.

- (2) Further, an approved master development plan shall expire unless fifty (50) percent of the net developable area within the approved master development plan is the subject of a final plats or development within ten (10) years from the date of approval of the master development plan. For a POADP existing prior to September 1, 1997 that meets the requirements of Subsection 35-1027(j) of the 1987 UDC, the rights for projects will expire ten (10) years from the date of approval of the MDP/POADP or September 25, 2007, whichever is later. The remaining fifty (50) percent must obtain final plat approval or be developed within ten (10) years after the initial fifty (50) percent of the net developable area within the master development plan has been platted or developed. Unless specific provisions to the contrary exist in an individual ordinance plan (see sec.35-412(g) (2)), a plat, or replat will not result in a loss of rights or constitute an abandonment of the original master development plan provided that the required area of acreage within the master development plan platted or value of infrastructure expenses do not fall below the amount indicated above as a result of the amendment or replat.
- (3) A single-phase project supported by the filing of a Fair Notice Form and plat application is complete five (5) years after the filing of such notice unless progress towards completion has been demonstrated.

**(b) Effect of project or permit completion**

After a project or permit is complete, the development or redevelopment of additional property included within the boundary of the completed project is a new project for purposes of this code.

Chapter 35, Article VII, Division 2 is amended by adding a new Section 35-717 as follows:

**35-717 Progress towards completion of a project**

**(a) Purpose**

This section implements the authority established by Texas Local Government Code Section 245.005 (b) to establish an expiration date for a permit and for a project if there has been no progress towards completion of the project.

**(b) Progress towards completion of a project**

For the purposes of this section, progress towards completion of a project shall include any one of the following actions after the initial application for the project has been filed:

- (1) An application for a final plat or plan is submitted to a regulatory agency;
- (2) A good-faith attempt is made attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) Costs have been incurred for developing the project including, without limitation, cost associated with roadway, utility, and other infrastructure facilities designed

to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

- (4) Fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) Utility connection fees or impact fees for the project have been paid to a regulatory agency.

**(c) Project Expiration**

A project expires five years after the initial valid application and if no “progress towards completion” has been made on the project during that time and a project expires five years after the last “progress towards completion” has been made, whichever is later.

Chapter 35, Article VII, Division 2 is amended by adding a new Section 35-718 as follows:

**35-718 Effect of expired project or permit**

Any right or restriction established by this Division 2 or by chapter 245 of the Texas Local Government code by the filing of an application for an initial permit for a project is extinguished when that permit:

- (1) expires due to the failure of the property owner to initiate the activity authorized by the permit and a new permit is required to take an action necessary to initiate the project for which the expired permit was required; or
- (2) expires and the action authorized by the permit was not completed and a new permit is required to take an action necessary to initiate the project for which the expired permit was required; or
- (3) the project expires in accordance with the provisions of this chapter.

**35-719 Reserved**

Chapter 35, Appendix A is amended as follows:

**Multi-Phase Project**

A project on a tract of land within the city or its extraterritorial jurisdiction (“ETJ”) where the entire property will be platted in two (2) or more plat phases or units.

**Permit**

A license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought. (Source: VTCA Local Government Code § 245.001). A “development permit” includes any of the following: a subdivision plat, a conditional use permit, a building permit, or a certificate of occupancy. A “development permit” does not include a certification of completeness, a letter of certification, an amendment to the text of this chapter, or a rezoning. A determination of property status,

including but not limited to, utility availability, zoning, rights under Article VII of this chapter, etc., is not a permit.

**Single-Phase Project**

A project on a tract of land within the city or its extraterritorial jurisdiction ("ETJ") where the entire property will be platted in one (1) plat phase or unit.

Chapter 35, Appendix "B" Section 35-B121 of the City Code of San Antonio, Texas is hereby amended by deleting Subsections 35-B121(d) and 35-B121(e) as follows:

**~~(d) — Letters of Certification~~**

~~The applicant for plat approval shall submit the following items simultaneously with the filing of the subdivision plat:~~

~~(1) — Tax Certificates.~~

~~A certificate from the city tax assessor/collector and from the proper official of other taxing agencies within whose jurisdiction the proposed subdivision is located attesting that all ad valorem taxes have been paid on the land included within the plat. The San Antonio Development Agency, in lieu of filing tax certificates, may file a written certificate approved by the city attorney stating that monies have been set aside in the court registry for the payment of taxes. For tax exempt properties, an applicant may submit evidence of the tax exemption in lieu of tax certificates.~~

~~(2) — San Antonio Water Systems (SAWS).~~

~~A letter of certification from the City San Antonio Water Systems and in addition, if applicable, other approved water purveyors, stating that the board has received and approved the proposed utilities layout and that adequate service is available to the subdivision or stating that the board has disapproved the proposed utilities layout.~~

~~(3) — City Public Service.~~

~~A letter of certification from City Public Service shall be furnished for subdivisions within the City Public Service gas and electric service areas. Where subdivisions, or portions of subdivisions, will be served by gas or electric companies other than City Public Service, letters of certification will come from the companies serving. The letter will certify that adequate service is available and that proposed subdivision plats and utilities layouts have been approved or disapproved.~~

~~(4) — Certificates of City Departments.~~

~~Letters of certification from the departments of development services, planning, and parks and recreation stating that they have received and approved or disapproved the applicable data required by subsection (e), below.~~

**~~(e) Data required for letters of certification.~~**

~~To obtain the required letters of certification, an applicant for plat approval shall submit the following data to the certifying agencies/departments. All data shall be annotated with the plat number of the associated plat.~~

**(1) Department of Development Services:**

The following information shall be submitted to the department of development services:

- A. ~~4 copies of the tentative plat~~
- B. ~~3 sets of plan and profiles (streets, alley, walks, drainage)~~
- C. ~~2 copies of utility layout~~
- D. ~~2 copies of street and drainage cost estimates~~
- E. ~~2 copies of drainage calculations~~
- F. ~~1 copy of traffic impact analysis with threshold work sheet~~
- G. ~~1 copy of digital file~~
- H. ~~If a proposed plat traverses or is contiguous with a state maintained facility, a permit from the Texas Department of Transportation (TxDOT) indicating approval of the proposed access point and right-of-way.~~

**(2) Floodplain Data and Fees.**

~~Two (2) copies of all data, as specified by the latest requirements of the Federal Emergency Management Agency, to apply for a conditional letter of map revision and payment of the associated fees, when the proposed plat shall cause a change in the alignment, width, or elevation of a one hundred year floodplain identified on a flood insurance rate map.~~

**(3) Landfills.**

~~If the proposed plat is located over a known landfill site, the following additional information shall be submitted. For purposes of this subsection, a "landfill" includes any controlled area of land used for the disposal of solid waste, as defined in the Solid Waste Disposal Act, Chapter 361 of VTCA Health & Safety Code, § 361.003.~~

- A. ~~Two (2) copies of the proposed plat showing two-foot contours in areas where the slope does not exceed five (5) percent and five-foot contours in areas where the slope exceeds five (5) percent, and delineating the limits of the landfill.~~
- B. ~~A narrative due diligence report prepared by a licensed engineer which addresses the following items, if known: (1) the name, address, and phone number of the property owner; (2) description of the nature and size of the proposed development, including projected population; (3) the percent of impervious cover after development and certification site will have a positive surface drainage; (4) history and age of the landfill; (5) site geology, including estimates of past and future ground settlement; (6) description and depth of refuse fill; (7) description of planned excavations, penetration of any landfill liner, and ultimate disposal site for excavated refuse; and (8) depth and movement of shallow ground water.~~
- C. ~~A soil gas survey for methane.~~
- D. ~~A slope stability analysis for all landfill embankments.~~
- E. ~~A disclaimer statement reading as follows: "By approving this subdivision plat, the City of San Antonio does not warrant that the development site is suitable for its intended or actual purpose, or that the site is free of any environmental defects or hazardous substances, and the City of San Antonio assumes no liability for the foregoing."~~

**(4) ~~San Antonio Water System~~**

- A. ~~The San Antonio Water System requires the applicant to submit documentation that describes:~~
- ~~1. How potable water will be supplied and distributed to the subdivision,~~
  - ~~2. How wastewater collection and disposal will be handled for the subdivision, and~~
  - ~~3. \_\_\_\_\_~~
  - ~~4. Plans for protection of the Edwards Aquifer (if applicable).~~
- B. ~~The applicant should contact the San Antonio Water System for a listing of current document submittal requirements.~~

**(5) ~~To City Public Service:~~**

- A. ~~Gas and electric service. A copy of proposed plat showing gas and electric easements to be dedicated and a copy of the proposed utilities layout showing locations of utilities, streetlights, fire hydrants, neighborhood delivery and collection box units, and sidewalks.~~
- B. ~~Street names. A copy of the proposed plat showing the names of all public and private streets.~~

Chapter 35, Appendix "B" of the City Code of San Antonio, Texas is hereby amended by adding a new Section 35-B131, Letters of Certification as follows:

**35-B131 Application for Plat Identification Number/Letters of Certification**

**(a) Application for Plat Identification Number/Letters of Certification**

The applicant for plat approval shall submit the following items simultaneously with the filing of the subdivision plat:

**(1) Tax Certificates.**

A certificate from the city tax assessor/collector and from the proper official of other taxing agencies within whose jurisdiction the proposed subdivision is located attesting that all ad valorem taxes have been paid on the land included within the plat. The San Antonio Development Agency, in lieu of filing tax certificates, may file a written certificate approved by the city attorney stating that monies have been set aside in the court registry for the payment of taxes. For tax exempt properties, an applicant may submit evidence of the tax exemption in lieu of tax certificates.

**(2) San Antonio Water Systems (SAWS).**

A Letter of Certification from the City San Antonio Water Systems and in addition, if applicable, other approved water purveyors, stating that the board has received and

approved the proposed utilities layout and that adequate service is available to the subdivision or stating that the board has disapproved the proposed utilities layout.

**(3) City Public Service.**

A Letter of Certification from City Public Service shall be furnished for subdivisions within the City Public Service gas and electric service areas. Where subdivisions, or portions of subdivisions, will be served by gas or electric companies other than City Public Service, Letters of Certification will come from the companies serving. The letter will certify that adequate service is available and that proposed subdivision plats and utilities layouts have been approved or disapproved.

**(4) Certificates of City Departments.**

Letters of Certification from the departments of development services, planning, parks and recreation, public works, and the applicable county stating that they have received and approved or disapproved the applicable data required by subsection (e), below.

**(b) Data required for Letters of Certification.**

To obtain the required Letters of Certification, an applicant for plat approval shall submit the following data to the certifying agencies/departments. All data shall be annotated with the plat number of the associated plat.

**(1) Department of Development Services:**

The following information shall be submitted to the department of development services:

- A. 4 copies of the tentative plat
- B. 3 sets of plan and profiles (streets, alley, walks, drainage)
- C. 2 copies of utility layout
- D. 2 copies of street and drainage cost estimates
- E. 2 copies of drainage calculations
- F. 1 copy of traffic impact analysis with threshold work sheet
- G. 1 copy of digital file
- H. If a proposed plat traverses or is contiguous with a state maintained facility, a permit from the Texas Department of Transportation (TxDOT) indicating approval of the proposed access point and right-of-way.

**(2) Floodplain Data and Fees.**

Two (2) copies of all data, as specified by the latest requirements of the Federal Emergency Management Agency, to apply for a conditional letter of map revision and payment of the associated fees, when the proposed plat shall cause a change in the alignment, width, or elevation of a one hundred year floodplain identified on a flood insurance rate map.

**(3) Landfills.**

If the proposed plat is located over a known landfill site, the following additional information shall be submitted. For purposes of this subsection, a "landfill" includes any controlled area of land used for the disposal of solid waste, as defined in the Solid Waste Disposal Act, Chapter 361 of VTCA Health & Safety Code, § 361.003.

- A. Two (2) copies of the proposed plat showing two-foot contours in areas where the slope does not exceed five (5) percent and five-foot contours in

areas where the slope exceeds five (5) percent, and delineating the limits of the landfill.

- B. A narrative due diligence report prepared by a licensed engineer which addresses the following items, if known: (1) the name, address, and phone number of the property owner; (2) description of the nature and size of the proposed development, including projected population; (3) the percent of impervious cover after development and certification site will have a positive surface drainage; (4) history and age of the landfill; (5) site geology, including estimates of past and future ground settlement; (6) description and depth of refuse fill; (7) description of planned excavations, penetration of any landfill liner, and ultimate disposal site for excavated refuse; and (8) depth and movement of shallow ground water.
- C. A soil gas survey for methane.
- D. A slope stability analysis for all landfill embankments.
- E. A disclaimer statement reading as follows: "By approving this subdivision plat, the City of San Antonio does not warrant that the development site is suitable for its intended or actual purpose, or that the site is free of any environmental defects or hazardous substances, and the City of San Antonio assumes no liability for the foregoing."

**(4) San Antonio Water System**

- A. The San Antonio Water System requires the applicant to submit documentation that describes:
  - 1. How potable water will be supplied and distributed to the subdivision,
  - 2. How wastewater collection and disposal will be handled for the subdivision, and
  - 3. Plans for protection of the Edwards Aquifer (if applicable).
- B. The applicant should contact the San Antonio Water System for a listing of current document submittal requirements.

**(5) To City Public Service:**

- A. Gas and electric service. A copy of proposed plat showing gas and electric easements to be dedicated and a copy of the proposed utilities layout showing locations of utilities, streetlights, fire hydrants, neighborhood delivery and collection box units, and sidewalks.
- B. Street names. A copy of the proposed plat showing the names of all public and private streets.

Chapter 35, Appendix "B" of the City Code of San Antonio, Texas is hereby amended by adding a new Section 35-B132, Fair Notice Form as follows:

## **35-B132 Fair Notice Form**

### **(a) Fair Notice**

The applicant shall provide the Fair Notice Form (Figure B132-1) with all applications for permits as that term is defined in Chapter 245 of the Texas Local Government Code. All fields must be completed in order for the Fair Notice Form to be valid.

### **(b) Vested Rights Permit Number**

The applicant shall provide the existing Vested Rights Permit Number if one has been approved for the proposed project for which a permit is sought.

### **(c) Permit Application**

1. All permit applications will be identified in an appropriate manner as required by the Fair Notice Form.
2. If any permit application identified in the Fair Notice Form, (including site plans if required by the Fair Notice Form) is not administratively completed within 45 days of the filing date of the Fair Notice Form, the notice will be null and void.

### **(d) Site Plan Requirements**

1. Site Plans for all submittals required by the Fair Notice Form shall include, but not be limited to, lot layout, general building footprint with approximate square footage of building(s), impervious cover, and land use.
2. Site Plans are required for SAWS/Utility Service Agreements; CPS Energy/Utility Service Agreements; Applications for Plat Identification Number/Letters of Certification (LOC); SAWS Category Determinations; and any other applications that do not contain the information required by this subsection.
3. Site Plans are required for Single Phase/Single Plat Projects for Multi-Family, Industrial, Special District, Commercial, Entertainment, Farm and Ranch, Office, Multiple Land Uses (mixed use development), and for any other proposed uses for single-phase/single plat projects that do not contain the information required by this subsection.
4. Site plans for single-phase projects with multiple land uses shall require the land allocation in square feet and acreage, the use allocation in square feet and acreage, and the impervious cover for each use. A site plan is not required for single phase/single plat single-family residential projects.

### **(e) Contents**

The Fair Notice Form shall contain, at a minimum, the information required by this section.

1. The Project Name and Property Description, and Location in relation to the Edwards Aquifer Recharge Zone, San Antonio City Limits, City Council District, School District, and Ferguson Map Grid Number.
2. The Owner's Name, Address, and Telephone and/or Fax Numbers.

3. The Agent's Name Address, and Telephone and/or Fax Numbers.
4. The Applicant's Name, Address, and Telephone and/or Fax Numbers.
5. The Engineer's/Surveyor's, Address, and Telephone and/or Fax Numbers.
6. The Contact Person's Name, Address, and Telephone and/or Fax Numbers.
7. The site plan required in subsection (d) above.

**(f) Certification**

The Fair Notice Form shall be executed by the Owner or Authorized Representative thereby certifying that the information contained in the Fair Notice Form is true and accurate.

**(g) Fair Notice Form Figure B132-1**

A sample form is attached as Exhibit "A". The director may change the form to conform to this Chapter and Chapter 245 of the Texas Local Government Code.

Chapter 35, Appendix "C", Section 35-C103 of the City Code of San Antonio, Texas is hereby amended as follows:

**35-C103 Subdivision and Platting Fees**

The following fees are established for plats and subdivision related matters. Platting fees shall be paid at the time of plat application. Any adjustments to the platting fees and other plat related fees shall be paid at the time of formal plat filing. Other fees shall be paid at the time of application.

(A) Permit, Development Order, Document or Action	(B) Fee Amount
Major subdivision plat fees	Base fee Letters of Certification \$ 425.00 \$ 625.00 Single family development (per lot*) \$ 64.00 Non-single family development (per acre*)\$480.00 Planning Commission Application Fee \$200.00
Minor plats	0 to 3 acres . . . . . \$ 595.00 3.1 to 10 acres . . . . . \$ 805.00 10.01 to 20 acres . . . \$1,075.00 20.1 or greater . . . . . \$1,610.00 Per lot . . . \$58.71 Per acre over 20.1 . . . \$ 110.00
Development plat, per plat	\$ 563.00
Amending plat fee	\$ 525.00
Variance fee, per request	\$ 151.00
Plat deferral fee, per request	\$ 410.00
Time extension fee	\$ 263.00
Vacating declaration fee	\$ 295.00
Replat fee, with notification fee	\$ 460.00
Emergency add-on fee	\$ 442.90

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Plan amendment fee, per amendment	\$ 525.00
Notification list fee:	Inside city limits . . . \$ 104.00 Outside city limits . . . \$ 104.00
Street name change application fee	\$ 250.00
Street name change installation fee (per sign)	estimate
Postponement of planning commission hearing fee, per processed postponement	\$ 309.00
Development rights determination	\$ 145.00
Design Criteria Manual	\$ 45.00
Master Plan Amendment	\$ 450.00

- This does not include lots or acres reserved for parks or open space pursuant to § 35-503 of this Chapter.

The following fees are established for Master Development Plans, Planned Unit Developments, Vested Rights Determination and Consent Agreements. All fees shall be paid at the time an application is filed or the service is requested.

Plan (Completeness) Review Fee, per Review	\$ 500.00
Plan Amendment fee, per Amendment	\$ 500.00
Vested Rights Determination	\$ 160.00 for homestead property (1 to 3 acres) and \$ 500.00 for single-family residential (over 1 lot or 3 acres) and commercial properties.
PUD Mailing List	\$ 100.00
Fair Notice Form Project Definition Affidavit	To Be Determined
Consent Agreement – Vested Rights	\$ 500.00

**SECTION 4.** All other provisions of Chapter 34 and Chapter 35 of the City Code of San Antonio shall remain in full force and effect unless expressly amended by this ordinance.

**SECTION 5.** Chapter 34 of the City Code of San Antonio, Texas is hereby amended to reflect the reorganization of SAWS departments by deleting [~~watershed protection and management department~~] and inserting [resource protection and compliance department] in its place throughout Chapter 34, provided however, this Section shall not change any provision of Chapter 34 contained in Section 2 above.

**SECTION 6.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 7.** The City Clerk is directed to publish notice of these changes to Chapter 34 and Chapter 35 in accordance with Article II, Section 17 of the Charter of the City of San Antonio.

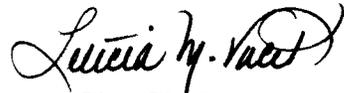
**SECTION 8.** The Director of Development Services is directed to provide written guidelines regarding the processing of determinations outlined in this ordinance.

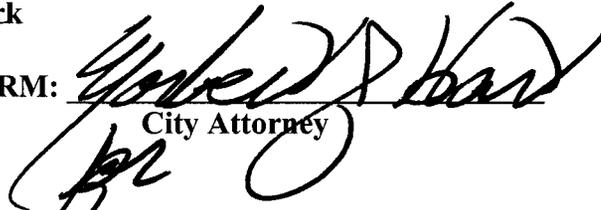
**SECTION 9.** The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted here in and to correct typographical errors and to format the number paragraphs to conform to the existing code.

**SECTION 10.** This ordinance shall become effective immediately upon passage if passed by eight or more votes otherwise this ordinance shall become effective ten days after passage, provided however, that this ordinance shall not become effective sooner than five days from the date of publication.

**PASSED AND APPROVED** this 16<sup>th</sup> day of February 2006.

  
M A Y O R  
**PHIL HARDBERGER**

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney

**City of San Antonio**  
**Development Services Department**  
**Fair Notice Form**



Date: \_\_\_\_\_ Notice Number: \_\_\_\_\_

1. *Original Fair Notice Form Number if Applicable:* \_\_\_\_\_
2. *Existing Vested Rights Permit No. if applicable:* \_\_\_\_\_

<b><u>COSA USE ONLY</u></b>	
Expiration date: _____	Authorized Rep: _____

3. *If a permit application identified in item (6) below is not completed (Administratively) within 45 days from the filing date of this form, this notice will be null and void.*
4. *All submittals with (\*) require a site plan. A site plan shall include lot layout, general building footprint with approximate square footage of building(s), impervious cover, and land use.*
5. *All single plat, Multiple Land Use projects must complete (# 7) of this form.*

6. *Permit application Type (Check all appropriate boxes):*

- |  |  |
|--|--|
| <input type="checkbox"/> Building Permit: No. _____                                  | <input type="checkbox"/> Military Airport Overlay Zone (MAOZ) No. _____          |
| <input type="checkbox"/> Master Development Plan (MDP)<br>(Formerly POADP) No. _____ | <input type="checkbox"/> P.U.D. Plan<br>No. _____                                |
| <input type="checkbox"/> MDP/ P.U.D. Plan<br>(Combination) No. _____                 | <input type="checkbox"/> Mixed Use District (MXD)<br>No. _____                   |
| <input type="checkbox"/> Master Plan Community District (MPCD)<br>No. _____          | <input type="checkbox"/> Traditional Neighborhood Development (TND)<br>No. _____ |
| <input type="checkbox"/> Manufactured Home Park Plan (MHPP)<br>No. _____             | <input type="checkbox"/> Pedestrian Plan (PP) No. _____                          |
| <input type="checkbox"/> Flexible Development District No. _____                     | <input type="checkbox"/> Single-Family (Residential) Plat No. _____              |
| <input type="checkbox"/> Urban Development (UD)                                      | <input type="checkbox"/> Rural Development (RD)                                  |
| <input type="checkbox"/> Farm and Ranch (FR)   | <input type="checkbox"/> Mix Light Industrial (MI-1)                             |

**EXHIBIT "A"**  
**Ordinance No. 2006-02-16-0241**

**City of San Antonio Development Services Department**  
**Fair Notice Form**  
**(Con't)**

**The following projects require a site plan.**

A site plan shall include, lot layout, general building footprint with approximate square footage of building(s), and land use.

- \* SAWS/ Utilities No. \_\_\_\_\_ \* Category Determination Letter from SAWS: \_\_\_\_\_
- \* CPS Energy/ Utilities No. \_\_\_\_\_ \* Other: \_\_\_\_\_
- \* Application for Letter of Certification (LOC) (Subdivision Plat No. issued): \_\_\_\_\_

**The following single plat projects require a site plan:**

- \* Multi-Family                      \* Commercial                      \* Office                      \* Industrial
- \* Multiple Land Use Projects (Complete # 7)                      \* Entertainment                      \* Special District
- \* Other: \_\_\_\_\_

**7. For all single plat, Multiple Land Use Projects please complete the following:**

**(a) Single - Family:** Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_  
Density \_\_\_\_\_

**(b) Multi -Family:** Land Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_  
Density \_\_\_\_\_

**(c) Commercial:** Land Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_

**(d) Office:** Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_

**(e) Industrial:** Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_

**(e) Entertainment:** Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_

**(e) Other Special District(s):** Allocation in Square Feet & Acreage \_\_\_\_\_  
Use Allocation in Square Feet & Acreage \_\_\_\_\_

**City of San Antonio Development Services Department**  
**Fair Notice Form**  
**(Con't)**

**8. Project Name:** \_\_\_\_\_

Property Description: \_\_\_\_\_

**Owner:** \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State \_\_\_\_\_ Zip Code: \_\_\_\_\_

**Agent:** \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State \_\_\_\_\_ Zip Code: \_\_\_\_\_

**Applicant:** \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State \_\_\_\_\_ Zip Code: \_\_\_\_\_

**Engineer/Surveyor:** \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Site is over/within/includes:**

Edwards Aquifer Recharge Zone:  Yes  No San Antonio City Limits.  Yes  No

Council District: \_\_\_\_\_ School District: \_\_\_\_\_ Ferguson map grid: \_\_\_\_\_

**Owner or Authorized Representative:**

**I certify that this Fair Notice form is true and accurate.**

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-mail: \_\_\_\_\_

**NOTE: To be valid, all fields must be completed.**

# Agenda Voting Results

Name: 27.

*Main Motion*

Date: 02/16/06

Time: 07:25:53 PM

Vote Type: Multiple selection

**Description:** Public hearing and consideration of an Ordinance amending Chapter 34 and Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas regarding recognition of rights under Chapter 245 of the Texas Local Government Code and common law for projects; implementing fair notice of a project and permit sought; adopting conforming amendments and apportioning current fees.

[Presented by Florencio Peña, Director, Development Services; Jelynn LeBlanc Burley, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

# Agenda Voting Results

**Name:** 27. Amendment 1 as presented by CM Hall

**Date:** 02/16/06

**Time:** 07:25:38 PM

**Vote Type:** Multiple selection

**Description:**

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

I move to amend Section 35-715(e) to allow changes in the number of buildings for a project within the project's first five years as follows:

(e) Changes in the number of buildings in a project is allowed within five years of filing the initial application and Fair Notice Form provided that such change does not increase the total impervious cover and the change does not increase the total square feet in the footprint of the original project.

The following is provided for record:

Chapter 35, Article VII, Division 2 is amended as follows:

**35-715      Modification to Project or Permit**

\* \* \* \* \*

**(e) Project change for a single phase project**

Changes in the number of buildings in a project is allowed within five years of filing the initial application and Fair Notice Form provided that such change does not increase the total impervious cover and the change does not increase the total square feet in the footprint of the original project.

I move to amend Section 34-926(c) as follows:

Section 34-926(c) is amended as follows:

**34-926      *Pollution Prevention Criteria in Category 1.***

\* \* \* \* \*

(c) To the extent allowed by law, if a project classified as the valid permit, as defined by Section 481.142 of the Texas Government Code, which caused the property to be placed in Category 1 is substantially altered, then the Category 1 status of such project, or portion thereof, affected by the following action(s) shall be lost, unless such project property is classified in Category 1 by reason of another valid permit, and the project shall be appropriately classified pursuant to Section 34-925.

In applying this provision "substantially altered" shall be considered as any action of the following actions if done through the initiative of the property owner or the property owner's agent provided however that "substantially altered" does not include those actions classified as minor amendments in Section 35-412 and Section 35-715 of Chapter 35 of this Code, unless it is shown that the substantial alteration(s) do not increase the potential for degradation as that term is defined herein:

- (1) Change in arterial or collector roadways;
- (2) Change in land use;
- (3) Change in drainage plan;
- (4) Change in projected gross impervious cover; or
- (5) Change in land use intensity.

I move to amend the proposed ordinance in Chapter 34 and various sections and subsections of Chapter 35 by correcting clerical errors and clarifying, without substantive change, provisions regarding: the accrual of rights; the optional use of existing UDC provisions by property owners; the five year expiration date for projects; and clarifying no site plan is required for single-family plats.

The City Council has a copy of the proposed amendments and I have provided a copy to the City Clerk.

Section 34-908 is amended as follows:

**34-908      Definitions**

Project: Project shall have the meaning contained in Chapter 35 of this Code.

Section 35-410 is amended as follows:

**35-410      Fair Notice**

The purpose of this section is to provide standard procedures for an applicant to accrue rights under Chapter 245 of the Texas Local Government Code.

**(a)      Applicability**

The provisions of this section apply to any application for a permit by which an applicant desires to accrue rights under Chapter 245 of the Texas Local Government Code. The provisions of this section do not apply where an applicant does not desire to accrue rights under Chapter 245 of the Texas Local Government Code.

**(b)      Initiation**

A Fair Notice Form shall be submitted in the form prescribed in Appendix "B."

**(c)      Completeness review**

The Fair Notice Form will be reviewed for completeness in accordance with Section 35-402.

**(d)      Decision**

The director of development services shall then review the application for completeness to ascertain that all required items and associated information for administrative review purposes have been submitted.

**(e)      Approval Criteria**

To accrue rights under Chapter 245 of the Texas Local Government Code, an applicant shall submit a complete application for a required permit to the director within 45 days of the submission of the Fair Notice Form.

**(f) Subsequent Applications**

Not Applicable

**(g) Amendments**

A Fair Notice Form shall not be amended. If a Fair Notice Form is amended, rights shall accrue as of the date of the amendment

**(h) Scope of Approval**

Applications declared complete within 45 days shall obtain rights under Chapter 245 of the Texas Local Government Code effective on the date of the initial application and Fair Notice Form. If an application is incomplete, the director will give written notice to the applicant identifying the missing/incomplete items within 10 business days. Any application resubmitted within the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of initial submission. Any application resubmitted after the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of the resubmission.

**(i) Recording Procedures**

A Fair Notice Form is not recorded.

Section 35-431 is amended as follows:

**35-431 Application for Plat Identification Number/ Letters of Certification**

\* \* \* \* \*

**(b) Initiation**

\* \* \* \* \*

**(3) Copies to Development Services Director.**

A copy of each request for a an Application for Plat Identification Number/Letter of Certification shall be filed with the director of development services. The request for a an Application for Plat Identification Number/Letter of Certification shall be in the form prescribed in Appendix "B". In order to track the application, the director of development services will may assign a plat identification number tentative tracking number for the letters letter of certification in the event that an application for subdivision plat approval is filed.

**(4) Plat Number**

Prior to submitting a plat, replat or amending plat for review by the city or any other agency, the applicant shall complete a an Application for Plat Identification Number/Letter of Certification plat application with the development services ~~servides~~-department and obtain a plat identification number.

All Applications for Plat Identification Number/Letters of Certification submitted for technical completeness review shall be subject to the fair notice provisions of this Chapter adopted in accordance with Chapter 245 of the Local Government Code. When a tentative plat ID number is initially requested, applicants shall pay the total Application for Plat Identification Number/Letters of Certification processing fee in connection with the request for a tentative plat ID number and submit a Fair Notice Form. The Planning Commission processing fee shall be remitted at the time a plat application submittal is deemed complete.

To accrue rights under Chapter 245 of the Texas Local Government Code, an applicant shall submit a complete Plat Identification Number/Letters of Certification Application to the director within 45 days of the submission of a Fair Notice Form and assignment of a tentative plat ID number. The director of development services shall then review the application for completeness to ascertain that all required items and associated information for administrative review purposes has been submitted. Plat Identification Number/Letters of Certification Applications declared complete within 45 days shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of the tentative plat ID number assignment. If an application is incomplete, the director will give written notice to the applicant identifying the missing/incomplete items within 10 business days. Any application resubmitted within the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of initial submission. Any application resubmitted after the initial 45 day period with the missing/incomplete information shall accrue rights under Chapter 245 of the Texas Local Government Code effective on the date of the resubmission.

**(5) Fees**

At the time an application for a plat number is submitted, the applicant shall pay the City of San Antonio the platting fees specified in Appendix "C" in the manner described in subsection (b)(4).

Section 35-712 is amended as follows:

**35-712 Recognition of Vested Rights Derived From Texas Local Government Code Chapter 245**

\* \* \* \* \*

**(b) Vested Rights Recognition of Statutory Rights Process**

\* \* \* \* \*

**(3) Basis for Statutory Permit Rights**

The following criteria will be used by the city in determining the existence of rights for projects initiated after September 1, 1997. The following permits may be relied on by a property owner or developer to establish permit rights for a project property that is the subject of the permit. Provided, however, a minor plat that plats only easements shall not confer any permit rights. The permit rights acquired in reliance on one (1) of the types of

permits indicated below will expire in five (5) years unless the action required to maintain permit rights is taken within the time frame indicated for each permit type and the project does not become dormant in accordance with Chapter 245 of the Texas Local Government Code and this chapter. A property owner or developer may take advantage of changes to this chapter that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

A. Master Development Plan (MDP)/Preliminary overall area development plan (POADP)

Rights under Chapter 245 of the Texas Local Government Code Permit rights will be recognized on the project property which is the subject of a MDP/POADP that has been approved by the city. A property owner or developer may elect to continue a project under the City Code provisions in effect on September 1, 1997 or to take advantage of changes to this chapter that enhance or protect the project without forfeiting any rights under this chapter provided that Fair Notice is provided with a MDP/POADP application in accordance with this chapter or by requesting recognition of rights for an existing and valid MDP/POADP and providing Fair Notice in accordance with this chapter planning department. The permit rights recognized for projects property located within with an approved MDP/POADP will expire unless a final plat is approved within two (2) years eighteen (18) months from the approval of the MDP/POADP that plats, at least eight (8) percent of the net area of the POADP area or an expenditure of at least five hundred thousand dollars(\$500,000.00) in project expenses has been made if the master development plan is one thousand (1,000) acres or less or an expenditure of at least one million dollars (\$1,000,000.00) has been made if the master development is more than one thousand (1,000) acres that requires at least five hundred thousand dollars (\$500,000.00) in infrastructure expenses if the POADP is one thousand (1,000) acres or less or at least one million dollars (\$1,000,000.00) if the POADP is more than one thousand (1,000) acres.

Further, the permit rights for projects property within an approved MDP/POADP will expire unless fifty (50) percent of the net area with the approved MDP/POADP is the subject of final plats or development within ten (10) years from the date of approval of the MDP/POADP. For a POADP existing prior to September 1, 1997 that meets the requirements of Subsection 35-1027(j) of the 1987 UDC, the rights for projects will expire ten (10) years from the date of approval of the MDP/POADP or September 25, 2007, whichever is later. The remaining fifty (50) percent must obtain final plat approval or be developed within ten (10) years after the initial fifty (50) percent of the net area within the MDP/POADP has been platted or developed unless Unless specific provisions to the contrary exist in an individual ordinance or city code provision, the filing of a minor amendment to a an amending MDP/POADP, a plat or replat will not result in a loss of permit rights to the entire MDP/POADP, provided that the required area of acreage within the MDP/POADP platted or value of project infrastructure expenses do not fall below the amounts indicated above as a result of the minor amendment, plat, or replat. A plat or replat that changes the project within a particular area of an MDP/POADP will cause rights for that area to terminate.

B. Plat Applications

Rights under Chapter 245 of the Texas Local Government Code Permit rights will be recognized for the project on the property that is the subject of an a-application for a Plat Identification Number/Letters of Certification plat application that has been filed with the department of development services city-planning department, provided all necessary platting fees have been paid. The rights recognized for a project property located within such a plat application will expire unless the plat application is heard by and approved by

the director of development services planning or the planning commission within two years eighteen (18) months from the date the initial plat application and provided that Fair Notice is provided with the plat application in accordance with this chapter city planning department. Neither an expired nor a withdrawn plat application may be relied upon as a permit application for the assertion of statutory rights under Chapter 245 of the Texas Local Government Code or any other right or claim based on common law. If after the expiration or the withdrawal of a plat application the applicant wishes future plat approval of the subject property, a new plat application shall be filed, new application fees shall be required and a new plat number shall be assigned.

C. Plats

Rights under Chapter 245 of the Texas Local Government Code Permit rights will be recognized for projects associated with on the property which is the subject of a plat that has been approved by the city planning commission or director of development services provided that Fair Notice is provided with the plat application in accordance with this chapter planning. The permit rights recognized for a project property located within an approved plat will expire unless the plat is recorded in in the Bexar County Deed Records within three (3) years from the date of approval by the city planning commission or director of development services planning.

D. Building Permits

A building permit may be relied on as a basis for rights under Chapter 245 of the Texas Local Government Code permit rights for projects property identified in the site plan submitted to the city as part of the building permit application provided that Fair Notice is provided with the permit application in accordance with this chapter. However, rights that are based base on a building permit will expire unless construction authorized by the building permit is begun within six six (6) months from the date the building permit is issued.

E. Rights under Chapter 245 of the Texas Local Government Code Permit Rights Conferred

Rights under Chapter 245 of the Texas Local Government Code Permits rights conferred by Rights accrued under this section shall not extend beyond the time periods prescribed herein except by the granting of a variance from the time limits as provided herein. Under no circumstances shall the extension of a time limit extend the permit rights conferred herein except through the variance provision of this section.

\* \* \* \* \*

**(g) Exemption From Vested Rights**

The types of ordinances enumerated in the Texas VTGA Local Government Code § 245.004 are exempt from this section and will apply to a project or development regardless of the effective date of the ordinance or the existence of vested rights for the project.

- (1) Future ordinances: Any ordinance that concerns the development of real property and is adopted after the adoption of this chapter, which incorporates this section into the city code of ordinances, may specifically state whether it is the type of ordinance that is exempted by § 245.004. However, the absence of such a statement shall not be determinative as to whether the ordinance is or is not exempted.

- (2) Existing ordinances: This section shall not be applicable to any ordinance that: a) concerns the development of real property; b) was adopted prior to the adoption of this chapter; and c) is exempted by § 245.004 from the protection provided by Chapter 245.
- (3) Determination by city attorney: Should a question arise as to whether an ordinance is exempted from Chapter 245, the director of development services shall request an opinion from the office of the city attorney.

\* \* \* \* \*

Section 35-714 is amended as follows:

### **35-714 35-713 *Dormant Projects***

#### **(a) Purpose**

The purpose of this section is to provide an expiration date for permits approved prior to this chapter which lack an expiration date, as provided in Texas Local Government Code § 245.005.

#### **(b) Applicability**

The provisions of this section apply to any permit if as of the first anniversary of the effective date of chapter 245 of the Texas Local Government Code: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project, as defined in Texas Local Government Code § 245.005.

---

Commentary: Texas Local Government Code § 245.005 defines "progress towards completion" as any of the following: (1) an application for a final plat or plan is submitted to a regulatory agency; (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project; (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located; (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

---

#### **(c) Expiration of Dormant Projects**

A dormant project, as defined in subsection (b), above, shall expire on one of the following dates, whichever comes later:

- (1) May 11, 2004 (the fifth anniversary of the effective date of Chapter 245 of the Local Government Code), provided that a valid project existed on May 11, 2000 and no progress towards completion of the project has been made by May 10, 2004; or
- (2) The expiration date established by applying the subsection entitled "scope of approval" in the regulations pertaining to the permit as established in Article 4; or
- (3) The expiration date for a permit subject to § 35-711 of this article for any eligible permit as set forth in § 35-711(a).

Section 35-716 is amended as follows:

## **35-716      Completion of a project or permit**

### **(a)      Project completion**

- (1)      A multi-phase project as defined in section 35-412 shall expire unless a final plat is approved within two (2) years from the approval of the master development plan that plats at least twenty (20) acres or eight (8) percent of the net developable area or an expenditure of at least five hundred thousand dollars(\$500,000.00) in project expenses has been made if the master development plan is one thousand (1,000) acres or less or an expenditure of at least one million dollars (\$1,000,000.00) has been made if the master development is more than one thousand (1,000) acres.
  
- (2)      Further, an approved master development plan shall expire unless fifty (50) percent of the net developable area within the approved master development plan is the subject of a final plats or development within ten (10) years from the date of approval of the master development plan. For a POADP existing prior to September 1, 1997 that meets the requirements of Subsection 35-1027(j) of the 1987 UDC, the rights for projects will expire ten (10) years from the date of approval of the MDP/POADP or September 25, 2007, whichever is later. The remaining fifty (50) percent must obtain final plat approval or be developed within ten (10) years after the initial fifty (50) percent of the net developable area within the master development plan has been platted or developed. Unless specific provisions to the contrary exist in an individual ordinance plan (see sec.35-412(g) (2)), plat, or replat will not result in a loss of rights an abandonment of the original master development plan provided that the required area of acreage within the master development plan platted or value of infrastructure expenses do not fall below the amount indicated above as a result of the amendment or replat.
  
- (3)      A single-phase project supported by the filing of a Fair Notice Form and plat application is complete five (5) years after the filing of such notice unless progress towards completion has been demonstrated.

### **(b)      Effect of project or permit completion**

After a project or permit is complete, the development or redevelopment of additional property included within the boundary of the completed project is a new project for purposes of this code.

Section 35-717 is amended by adding a new Subsection (c) as follows:

## **35-717      Progress towards completion of a project**

### **(a)      Purpose**

This section implements the authority established by Texas Local Government Code Section 245.005 (b) to establish an expiration date for a permit and for a project if there has been no progress towards completion of the project.

### **(b)      Progress towards completion of a project**

For the purposes of this section, progress towards completion of a project shall include any one of the following actions after the initial application for the project has been filed:

- (1) An application for a final plat or plan is submitted to a regulatory agency;
- (2) A good-faith attempt is made attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) Costs have been incurred for developing the project including, without limitation, cost associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) Fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) Utility connection fees or impact fees for the project have been paid to a regulatory agency.

**(c) Project Expiration**

A project expires five years after the initial valid application and if no "progress towards completion" has been made on the project during that time and a project expires five years after the last "progress towards completion" has been made, whichever is later.

Section 35-718 is amended as follows:

**35-718 Effect of expired project or permit**

Any right or restriction established by this Division 2 or by chapter 245 of the Texas Local Government code by the filing of an application for an initial permit for a project is extinguished when that permit:

- (1) expires due to the failure of the failure of the property owner to initiate the activity authorized by the permit and a new permit is required to take an action necessary to initiate the project for which the expired permit was required; or
- (2) expires and the action authorized by the permit was not completed and a new permit is required to take an action necessary to initiate the project for which the expired permit was required; or
- (3) the project expires in accordance with the provisions of this chapter.

Appendix "B", Section 35-B131, Letters of Certification is amended as follows:

**35-B131 Application for Plat Identification Number/Letters of Certification**

**(a) Application for Plat Identification Number/Letters of Certification**

Appendix "B", Section 35-B132, Fair Notice Form is amended as follows:

### **35-B132 Fair Notice Form**

#### **(a) Fair Notice**

The applicant shall provide the Fair Notice Form (Figure B132-1) with all applications for permits as that term is defined in Chapter 245 of the Texas Local Government Code. All fields must be completed in order for the Fair Notice Form to be valid.

#### **(b) Vested Rights Permit Number**

The applicant shall provide the existing Vested Rights Permit Number if one has been approved for the proposed project for which a permit is sought.

#### **(c) Permit Application**

1. All permit applications will be identified in an appropriate manner as required by the Fair Notice Form.

2. If any permit application identified in the Fair Notice Form, (including site plans if required by the Fair Notice Form) is not administratively completed within 45 days of the filing date of the Fair Notice Form, the notice will be null and void.

#### **(d) Site Plan Requirements**

1. Site Plans for all submittals required by the Fair Notice Form shall include, but not be limited to, lot layout, general building footprint with approximate square footage of building(s), impervious cover, and land use.

2. Site Plans are required for SAWS/Utility Service Agreements; CPS Energy/Utility Service Agreements; Applications for Plat Identification Number/Letters of Certification (LOC); SAWS Category Determinations; and any other applications that do not contain the information required by this subsection.

3. Site Plans are required for Single Phase/Single Plat Projects for Multi-Family, Industrial, Special District, Commercial, Entertainment, Farm and Ranch, Office, Multiple Land Uses (mixed use development), and for any other proposed uses for single-phase/single plat projects that do not contain the information required by this subsection.

4. Site plans for single-phase projects with multiple land uses shall require the land allocation in square feet and acreage, the use allocation in square feet and acreage, and the impervious cover for each use. A site plan is not required for single phase/single plat single-family residential projects.