AN ORDINANCE 2014-08-14-0581

AMENDING THE CITY CODE OF SAN ANTONIO, TEXAS BY AMENDING CHAPTER 34, WATER AND SEWERS REGARDING POLLUTION PREVENTION CRITERIA AND BEST MANAGEMENT PRACTICES AND CHAPTER 35, UNIFIED DEVELOPMENT CODE REGARDING RECOGNITION OF RIGHTS DERIVED FROM CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE, PLAT IDENTIFICATION NUMBERS, LETTERS OF CERTIFICATION, AND REMOVING THE FAIR NOTICE FORM REQUIREMENT.

WHEREAS, City Council now desires to amend the City Code of San Antonio, Texas; **NOW THEREFORE;**

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

SECTION 1. Ordinance number 2006-02-16-0241 adopted by the San Antonio City Council on February 16, 2006 is hereby repealed in its entirety.

SECTION 2. The City Code of San Antonio, Texas is hereby amended by adding language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance. Language that is [bracketed] and in *italics* is included for informational purposes as such amendments were adopted by subsequent amending ordinances and the amendments shall remain in full force and effect for all purposes during the period after which they were enacted and for the purposes for which they were enacted.

SECTION 3. 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:

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.

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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.

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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:

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SECTION 4. Chapter 35 of the City Code of San Antonio, Texas is hereby amended as follows:

Chapter 35, Article IV, is amended by adding a new section 35-410 as follows:

35-410 Procedures for Statutory Rights (Chapter 245)

The purpose of this section is to provide standard procedures for recognition of rights under Chapter 245 of the Texas Local Government Code (Chapter 245).

(a) Applicability

The provisions of this section apply to any application for a permit by which an applicant desires recognition of rights under Chapter 245. The provisions of this section do not apply where an applicant does not desire recognition of rights under Chapter 245.

(b) Initiation

A request for recognition of Chapter 245 permit rights may be initiated by the submission of an application containing written information that provides the city fair notice of the project and nature of the permit sought, provided that such written information includes a description of each land use (residential, multi-family, commercial or industrial) by acreage. Applications containing this information may include but not be limited to plats, MDPs, building permits, or Utility Service Agreements (with the supporting engineering report in conformance with the San Antonio Water System utility service regulations).

(c) Decision

The director of development services shall then review the request to ascertain that all information required by Chapter 245 for review for fair notice purposes has been submitted. The Director will notify an applicant of any incomplete filing within 10 business days, unless a shorter notification period is required in other sections of the city code.

(d) Approval Criteria

Chapter 245 rights will be recognized when a complete permit application for a project that provides the city fair notice of that project has been received by the city. To accrue Chapter 245 rights effective on the date of the filing of the original application, the application providing fair notice and the nature of the permit sought, must be complete within 45 days of the original application filing. Applications not deemed complete within 45 days will accrue rights on the date of completeness.

(e) Amendments to a Project or Permit

Chapter 245 rights after a project or permit is modified shall be determined in accordance with Section 35-715.

Chapter 35, Article IV, Section 35-431 is amended as follows:

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

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(b) Initiation

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(3) Copies to Development Services Director.

A copy of each request for an Application for Plat Identification Number/Letter of Certification shall be filed with the director of development services. The request for 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 to ~~tentative tracking number for~~ the letters ~~letter~~ of certification in the event that an application for subdivision plat approval is filed.

(4) Plat Number

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When a 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 plat ID number. The Planning Commission processing fee shall be remitted at the time the Planning Commission plat application is submitted.

To accrue rights under Chapter 245 an applicant shall submit information describing the project that provides fair notice of the project to the city. 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.

(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).

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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.~~ [*Applications for a determination of rights shall be by contiguous tracts or phases (a tract may be comprised of multiple parcels or lots); non-contiguous tracts or non-contiguous phases shall require an application and determination for each tract or phase.* Ordinance 2006-11-30-1333]

(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.

(1)~~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

(2)~~B~~. The applicant has proceeded in good faith, and no approvals or permits have lapsed or been revoked; and

(3)~~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(c).~~

~~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, the state or federal constitutions, or to the types of ordinances, or other governmental action, enumerated in Chapter 245, § 245.004. Any claim of right made under some law or authority, other than Chapter 245 ~~or § 43.002, should~~ must be made in writing 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 shall be approved or issued unless the applicant has demonstrated compliance with all of the following criteria for statutory rights:

A. The applicant has filed an application for a permit for a project which provides the city fair notice of that project, as provided in 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 Chapter 245, § 245.004; and

C. The project has not become dormant as defined in Chapter 245, § 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. The application shall contain information describing the project to provide fair notice of the project to the city and ~~that indicates~~ which permit or permits are being relied upon by the applicant to establish ~~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. [*Applications for a determination of rights shall be by tracts or phases and not by MDPs or POADPs. For these purposes, a tract may be comprised of multiple parcels or lots.* Ordinance 2006-11-30-1333 and Ordinance 2009-01-15-0001]

(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 fair notice of the project and that one (1) or more permit(s) exists on a project, ~~they shall issue a certificate~~ notice in writing shall be issued to the applicant recognizing ~~vested~~ rights for the project. The ~~certificate~~ notification 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~~ notification shall also clearly state the project being recognized and indicate the terms 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 that additional ~~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-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 ~~Permit rights~~ will be recognized for ~~on~~ the project that ~~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 information describing the project giving fair notice of the project to the city 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 information describing the project to provide fair notice of the project to the city 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 plan 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)* Ordinance 2010-11-18-0985] 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* Ordinance 2009-01-15-0001] filing of a minor amendment to a ~~an amending~~ MDP/POADP, a plat, or [*a* Ordinance 2009-01-15-0001] 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 [*the* Ordinance 2009-01-15-0001] 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. [*An expired or invalid MDP/POADP may not be the basis for accrual of statutory rights under V.T.C.A. Local Government Code Ch. 245 or any other right of claim based on common law. Neither shall any endeavor of project that does not meet the requirements of Section 35-1027 of the 1987 UDC as amended nor any permit that has expired in accordance with the dormancy provisions of any state statute or provision of the city code be used as a basis for approval of permit rights, development rights, or statutory rights.* Ordinance 2009-08-20-0661]

B. Plat Applications

Rights under Chapter 245 ~~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 information describing the project giving fair notice of the project to the city 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 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 ~~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 if information describing the project giving fair notice of the project to the city 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 ~~tin~~ 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 ~~permit rights~~ for projects ~~property~~ identified in the site plan submitted to the city as part of the building permit application provided that information describing the project giving fair notice of the project to the city 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 ~~sie~~ (6) months from the date the building permit is issued.

E. Rights under Chapter 245 ~~Permit Rights Conferred~~

~~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~~ written notices 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~~ notices issued for a three calendar year period. The file shall ~~and should~~ be reviewed annually to remove ~~certificates~~ notices that have expired ~~more than three (3) years old~~. Electronic copies of ~~certificates~~ notices 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~~ [*statutory* Ordinance 2006-11-30-1333] 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 ~~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 [*sixty (60)* Ordinance 2010-11-18-0985] days from the date the request for appeal was filed. [*The planning commission's review of the director's decision shall be based solely upon the same information as was available to the director and as provided to the applicant when the decision was made.* Ordinance 2010-11-18-0985] 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/his 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 information in the appeal shall be limited to the information before the director when the decision was made. The [*development services director* Ordinance 2010-11-18-0985] 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/his 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 information in the appeal shall be limited to the information before the director when the decision was made. The [*director of development services* Ordinance 2010-11-18-0985] 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 ~~VTCA Local Government Code~~ Chapter 245, § 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 [*of* Ordinance 2009-01-15-0001] the permit or permits that were submitted for recognition except by the granting of a variance from the time limit as provided herein. [*No determination of rights shall be recognized as valid beyond five years from the date of issuance of said determination. Further, any permit that forms the basis of a rights determination* that ~~*which*~~ *becomes invalid or expires shall result in a void determination in accordance with §35-714.*] Ordinance 2009-01-15-0001]

(i) Voluntary Compliance

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

(j) Previously issued ~~Certificates~~ Rights Determinations

Nothing herein shall affect the validity of any ~~vested~~ right that ~~which~~ was recognized pursuant to Section 35-1027 inserted into the UDC by Ordinance No. 86715, passed and approved September 25, 1997 provided such project has not lost such rights by operation of law.

(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 effects ~~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 determination of rights under Chapter 245 of the Texas Local Government Code may apply for a consent agreement 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 may be approved subject to compliance with subsection (b). An Application for approval of a consent agreement must be filed concurrent with or subsequent to an application for a determination of statutory rights.

(b) Terms and conditions

A consent agreement shall be signed by the city attorney, the director, 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, state or federal ~~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 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~~ Chapter 245, § 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 ~~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).

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 [*Subsection 35-412(h)* Ordinance 2010-11-18-0985] 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/features visible when the project commenced.

(12) Changes made to increase the preservation ratio of trees for those projects subject to the applicable current or previous 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 classified as minor 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 information describing the project to provide fair notice of the project to the city, 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 [*Subsection 35-412 (h)*), Ordinance 2010-11-18-0985] 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 is complete five (5) years after the filing of the application 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 Chapter 245, 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 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 by the filing of an application for an initial permit for a project is extinguished when:

(1) that permit 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) that permit 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: Chapter 245, Texas Local Government Code ~~VTCA~~ § 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, is 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) CPS Energy ~~City Public Service.~~

A Letter of Certification from CPS Energy ~~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. [*Eleven 11,* Ordinance 2009-01-15-0001] copies of the 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. [*Three 3 copies,* Ordinance 2009-01-15-0001] 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.

[*I. One (1) 8½ X 11 reduction of ~~tentative~~ plat*

J. Tree Affidavit

K. Two (2) Storm Water Management Reports

L. If applicable, the following item(s):

1. *If a proposed plat traverses or is contiguous with a state maintained facility, a ~~permit~~* plat approval letter *from the Texas Department of Transportation (TxDOT) indicating approval of the proposed access point and right-of-way*
2. *Two (2) copies of utility layout*
3. *Two (2) copies of street and drainage cost estimates*
4. *Three (3) sets of plan and profiles (streets, alley, walks, drainage)*
5. *Three (3) copies of the signage plan*
6. *One (1) geo-tech report*
7. *One (1) Site Plan – non-single-family only*
8. *Two (2) copies of approved POADP, MDP, PUD plans*
9. *Copy of previous plat(s)*

M. Any other information that the Director deems necessary

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(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)* ***Parks and Recreation Department.***

A. One (1) copy of the proposed plat
B. Letter including type of land use proposed and number of dwelling units
C. If applicable the following item(s):
1. Letter including Park Dedication credit calculations
2. Copy of the Homeowner's Association Articles of Incorporation
3. Letter including Fee in Lieu Land Dedication calculations

(5) Historic Preservation Office.

A. Two (2) copies of proposed plat
B. One (1) request for review form

(6) Bexar County.

A. Digital Copy of plat
B. Two (2) sets of Storm Water Management Plans
C. Two (2) copies of TIA and disk of analysis
D. Address plat
E. If applicable, the following item(s):
1. 2 sets of utility plans
2. 1 copy of approved POADP, MDP, PUD
3. Final Geotech report
4. 3 sets of streets and drainage plans
5. 2 copies of cost estimates streets & drainage
6. 1 digital copy of construction plans
7. Site evaluation form with required soil analysis

8. *Water purveyor documentation/letter*
9. *Plan showing the proposed On-Site Sewage Facility (OSSF) on the property*]

Ordinance 2009-01-15-0001]

(7) 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.

(8) CPS Energy

A. Gas and electric service. [*Three (3) copies* Ordinance 2009-01-15-0001] of the proposed plat showing gas and electric easements to be dedicated and [*three (3) copies* Ordinance 2009-01-15-0001] 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.

C. [*Authorization letter to install streetlights, if applicable.*

D. *Subdivision Development Application*]

[Ordinance 2009-01-15-0001]

SECTION 5. The Director of Development Services is directed to provide written guidelines regarding the processing of determinations outlined in this ordinance.

SECTION 6. The San Antonio Water System is directed to remove references to Section 35-B132, Fair Notice Form, and modify the SAWS Utility Service Agreements to conform to this ordinance including but not limited to the provisions of Section 35-410(b).

SECTION 7. All other provisions of Chapter 34 and Chapter 35 of the City Code of the City of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 8. Chapter 34 and Chapter 35 of the City Code of San Antonio, Texas are hereby amended to reflect the repeal of Ordinance Number 2006-02-16-0241 and the changes adopted by City Council herein.

SECTION 9. 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 3 above.

SECTION 10. 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 11. The City Clerk is directed to publish notice of these amendments to Chapter 35, Unified Development Code of the City Code of the City of San Antonio, Texas. Publication shall be in an official newspaper of general circulation in accordance with Section 17 of the City Charter.

SECTION 12. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 13. This ordinance shall become effective immediately 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 on this 14th day of August 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**17 (in consent vote: 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18)**
Date:	08/14/2014
Time:	11:53:42 AM
Vote Type:	Motion to Approve
Description:	An Ordinance amending Chapter 34 and Chapter 35 (UDC) of the City Code to establish the process for the recognition of permit rights by the City of San Antonio for projects; and removing the requirement of the Fair Notice Form. [Erik Walsh, Deputy City Manager; Roderick Sanchez, Director, Development Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy Taylor	Mayor		x				
Diego Bernal	District 1		x			x	
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				