

ORDINANCE AMENDMENT REVIEW SHEET DRAFT

Amendment: C20-2023-020 Zoning Application Processes and Deadlines

Description: Amendments to City Code Title 25-1 and 25-2 to create a six-month pilot program modifying certain deadlines related to zoning and rezoning applications and neighborhood plan amendment applications.

Background: Initiated by City Council [Resolution 20230608-078](#).

On June 8, 2023, City Council approved [Resolution 20230608-078](#) directing staff to create a six-month pilot program that extends certain deadlines related to zoning and rezoning applications.

Summary of Proposed Code Amendment: The following are proposed amendments to City Code Title 25-2 to create a six-month pilot program modifying certain deadlines related to zoning and rezoning applications. The six-month pilot program is proposed to extend deadlines, as follows:

1. The deadline for a Land Use Commission to hold a public hearing after an application is filed will extend from 60 days to 120 days ([Sec. 25-2-282 Land Use Commission Public Hearing and Recommendation](#)).
2. The deadline for City Council to hold a public hearing after the Land Use Commission makes a recommendation will extend from 40 to 80 days ([Sec. 25-2-283 City Council Zoning Hearing and Action](#)).
3. An application expiration will extend from 181 days to 362 days after it is filed if a public hearing before a Land Use Commission has not been scheduled ([Sec. 25-2-246 Expiration of Application](#)).
4. An application expiration will extend from 181 days to 362 days after it is filed if the Land Use Commission or City Council grants an indefinite postponement ([Sec. 25-2-246 Expiration of Application](#)).

Neighborhood plan amendment and rezoning and zoning applications are often submitted and approved concurrently. To align neighborhood plan amendment application deadlines with zoning and rezoning application deadlines, the following amendments are proposed to City Code Title 25-1 to create a six-month pilot program modifying certain deadlines related to neighborhood plan amendments:

1. The deadline for a Land Use Commission to hold a public hearing after an application is filed will extend from 90 days to 120 days ([Sec. 25-1-808 Land Use Commission Public Hearing and Recommendation](#)).
2. The deadline for City Council to hold a public hearing after the Land Use Commission makes a recommendation will extend from 40 to 80 days ([25-1-809 City Council Hearing and Recommendation](#)).
3. An application expiration will extend from 181 days to 362 days after it is filed if a public hearing before a Land Use Commission has not been scheduled ([25-1-807 Expiration of Application](#)).
4. An application expiration will extend from 181 days to 362 days after it is filed if the Land Use Commission or City Council grants an indefinite postponement ([25-1-807 Expiration of Application](#)).

The pilot program will expire six months after the commencement date in the adopted ordinance unless the City Council or City Manager determines it is necessary to terminate the program earlier. The City Manager will be authorized to terminate the pilot program without further Council action. If there is a need for an extension, an item will be placed on the City Council agenda before the expiration date in the Ordinance to consider extending the pilot program an additional six months.

Code Amendment Text Changes: See draft redline.

Staff Recommendation: Recommended

Council initiated a proposed pilot program to allow for a more thorough review process for applicants and to mitigate the expiration of zoning and rezoning applications. Currently, the process for preventing the expiration of zoning and rezoning case applications consists of public notification of the anticipated public hearing as required by [Section 25-1-82\(A\)](#) of the Code, then subsequently announcing a postponement of the case during the scheduled Land Use Commission and/or City Council meeting. Public hearing postponements have increased due to the high volume of complex zoning and rezoning applications (which include Planned Unit Developments and Restrictive Covenant Terminations) that have been filed with the City of Austin. In 2023, the Zoning division has postponed a high volume of zoning and rezoning applications, the most prevalent reason being the need for continued interdepartmental review.

The pilot program will extend the timeframe for project due diligence and negotiations and mitigate the possible expiration of zoning cases and the associated [fees](#) should the applicant need to re-file their application. The pilot program will allow for increased predictability of public hearing opportunities for community stakeholders.

The perceived disadvantage of the pilot program is that extended deadline(s) will delay the zoning review process. With additional zoning staff and consultant augmentation, the intention is not to delay, but rather to meet existing public hearing scheduling deadlines of 40, 60, and 181 days after the date of an application filing. The extensions are intended to allow for more predictability for applicants. Should the proposed pilot program not be approved, public hearing scheduling requirements and the number of postponements will remain status quo.

Below are examples of recent zoning and rezoning postponements:

C814-2021-0175 – On March 14, 2023, the Planning Commission approved a 3rd staff request for an indefinite postponement to keep the PUD application in review.

C14-2022-0092 – On June 6, 2023, the Zoning and Platting Commission approved a 2nd indefinite postponement request for the applicant to continue to work with the Watershed Protection Department.

C14-2022-0162 – On May 9, 2023, the Planning Commission granted the staff request for an indefinite postponement to prevent the case from expiring.

C14-77-138(RCT) – On May 9, 2023, the Planning Commission granted the staff request for an indefinite postponement to prevent the case from expiring.

C14-2023-0005 – On July 18, 2023, the ZAP Commission granted the staff request for an indefinite postponement to keep the case in review.

C14-2022-0035 - Case received on March 21, 2022. This case had to be noticed for August 9, 2022, PC to keep the case from expiring as applicant was not ready to move forward.

C14-2022-0174 - Case received on December 14, 2022. This case had to be noticed for June 13, 2023, PC to keep the case from expiring. The applicant wanted an associated case to be on the same agenda, which ultimately was July 25, 2023.

C814-2021-0175 – On March 14, 2023, the Planning Commission approved a 3rd staff request for an indefinite postponement to keep the PUD application in review.

C14-2022-0092 – On June 6, 2023, the Zoning and Platting Commission approved a 2nd indefinite postponement request for the applicant to continue to work with the Watershed Protection Department.

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C14-2023-0005 – On July 18, 2023, the ZAP Commission granted the staff request for an indefinite postponement to keep the case in review.

In addition, staff recommends modifying the same deadlines for neighborhood plan amendment applications. Neighborhood plan amendments and zoning and rezoning cases are often submitted, reviewed, and approved concurrently. To ensure the application timelines do not conflict, similar deadlines are proposed to be extended with the six-month pilot program.

Planning Commission Action:

September 26, 2023 – Scheduled for Planning Commission

Council Action:

September 21, 2023 – City Council Set the Public Hearing

October 19, 2023 – City Council Conduct Public Hearing

Sponsor Department: Planning Department

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§ 25-2-246 EXPIRATION OF APPLICATION.

- (A) A zoning or rezoning application expires if the director of the Neighborhood Planning and Zoning Department does not schedule the application for a public hearing:
- (1) by the Land Use Commission before the ~~181st~~ 362nd day after the date of filing; or
 - (2) by the Land Use Commission or council before the ~~181st~~ 362nd day after the date on which the Land Use Commission or council grants an indefinite postponement of a scheduled public hearing.
- (B) Except as provided in Subsection (C), a zoning or rezoning application expires if the council does not adopt an ordinance before the 361st day after council closes the public hearing on the application.
- (C) An applicant may request that the director of the Neighborhood Planning and Zoning Department or council extend an application that will expire under Subsection (B).
- (1) An applicant's request for the director of the Neighborhood Planning and Zoning Department's approval must be in writing and filed before the application expires.
 - (2) An applicant may file one request for an extension from council. The request must state good cause for the extension and may be for not more than 180 days.

Source: Section 13-1-406(f) and Section 13-1-409; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11.

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§ 25-2-282 LAND USE COMMISSION PUBLIC HEARING AND RECOMMENDATION.

- (A) The Land Use Commission shall hold a public hearing on a zoning or rezoning application not later than the ~~60th~~ 120th day after the date the application is filed. The director of the Neighborhood Planning and Zoning Department shall give notice under Section 25-1-132(A) (*Notice Of Public Hearing*) of the public hearing. If the application includes property located within the Waterfront Overlay (WO) combining district, the director shall request a recommendation from the Small Area Planning Joint Committee of the Planning Commission and the Zoning and Platting Commission to be considered by the Land Use Commission at the public hearing. If the Board fails to make a recommendation as required under Section 25-2-715 (*Review and Recommendation of the Small Area Planning Joint Committee of the Planning Commission and the Zoning and Platting Commission*), the Land Use Commission or accountable official may act on the application without a recommendation from the Board.
- (B) The Land Use Commission shall make a recommendation to the council on a zoning or rezoning application not later than the 14th day after the Land Use Commission closes the public hearing on the application.
- (C) The Land Use Commission may recommend that the council:
- (1) approve the application as proposed;
 - (2) approve a more restrictive zoning classification than requested;
 - (3) approve the proposed classification or a more restrictive classification subject to conditions; or
 - (4) deny the application.
- (D) If the Land Use Commission does not adopt a recommendation on an application, the director of the Neighborhood Planning and Zoning Department shall forward the application to council without a Land Use Commission recommendation.
- (E) If the Land Use Commission does not hold a public hearing in accordance with Subsection (A), the applicant may file a written request for a hearing with the director of the Neighborhood Planning and Zoning Department or Land Use Commission.
- (1) If requested, the director of the Neighborhood Planning and Zoning Department shall schedule a public hearing before the Land Use Commission on the first Land Use Commission meeting after the date the request is received for which the director of the Neighborhood Planning and Zoning Department can provide notice under Section 25-1-132(A) (*Notice Of Public Hearing*) of this title.
 - (2) The following procedures apply to a public hearing scheduled under this subsection:
 - (a) the Land Use Commission shall conduct the public hearing before other business scheduled for the same meeting is considered;
 - (b) if more than one public hearing scheduled under this subsection is on an agenda, the Land Use Commission shall conduct the public hearings in the order in which the written requests for the public hearings were received; and
 - (c) if a public hearing is not completed on the date it is scheduled, the Land Use Commission shall continue the public hearing to the next and successive meetings of the Land Use Commission until completed.
 - (3) The Land Use Commission shall make a recommendation on an application considered under this subsection at the same meeting that the Land Use Commission closes the public hearing on the application, except that, the Land Use Commission may postpone its decision on the application for not more than 14 days with the consent of the applicant.

(F) The director of the Neighborhood Planning and Zoning Department shall report the Land Use Commission's recommendation on each zoning or rezoning application to the council.

Source: Section 13-1-405; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11; Ord. 20090611-074; Ord. No. 20141211-204, Pt. 25, 7-1-15 .

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§ 25-2-283 CITY COUNCIL ZONING HEARING AND ACTION.

- (A) The council shall hold a public hearing on a zoning or rezoning application not later than the ~~40th~~ 80th day after the date of the Land Use Commission recommendation.
- (B) The director of the Neighborhood Planning and Zoning Department shall give notice under Section 25-1-132(B) (*Notice of Public Hearing*) of a public hearing held under this section.
- (C) Unless the council votes to deny a postponement request, a postponement of the public hearing on a zoning or rezoning application is automatically granted on the first request made by each of the following: staff, the applicant, or one interested party in opposition to the application.
- (1) A postponement request must be written and submitted to the director of the Neighborhood Planning and Zoning Department not later than the seventh day before the scheduled public hearing. The request must specify the reasons for the postponement. The director of the Neighborhood Planning and Zoning Department shall provide a recommendation on the validity of the postponement request.
 - (2) The city clerk shall enter an automatic postponement in the minutes with a notation of the identity of the party requesting the postponement.
 - (3) Unless otherwise approved by council, an interested party is limited to one postponement for a period of not more than 60 days from the date of the scheduled public hearing.
 - (4) The council shall set the time and date of the new hearing at the time a postponement is granted.
- (D) After a public hearing on a zoning or rezoning application, the council may:
- (1) approve the zoning or rezoning application as requested;
 - (2) approve a more restrictive zoning classification than requested;
 - (3) approve the requested classification or a more restrictive classification subject to conditions; or
 - (4) deny the proposed zoning or rezoning.
- (E) The council may approve the zoning or rezoning of property if the council determines that the zoning or rezoning is consistent with the Comprehensive Plan and the purposes of this title.
- (F) Unless authorized by a resolution of the council, the director of the Planning and Zoning Department may not schedule a zoning or rezoning ordinance for third reading by the council until:
- (1) the city attorney determines that requirements of the City Code have been met and that required documents protect the interests of the City and have been executed. The city attorney shall make a determination regarding the documents not later than the 14th day after the documents are submitted; and
 - (2) for an application to rezone a property within the mobile home residence (MH) district designation that contains an existing mobile home park, no earlier than the 270th day after all tenants entitled to notice under Section 25-1-712 (*Tenant Notification Required*) have received the required notification.
- (G) The council may not require a site plan as a condition of zoning or rezoning.

Source: Section 13-1-406(a) through (e) and (h); Ord. 990225-70; Ord. 000309-39; Ord. 010329-18; Ord. 010607-8; Ord. 030807-36; Ord. 031211-11; Ord. No. 20160901-050 , Pt. 7, 9-12-16.

§ 25-1-807 EXPIRATION OF APPLICATION.

- (A) A neighborhood plan amendment application expires if the director does not schedule the application for a public hearing:
 - (1) by the Planning Commission before the ~~181st~~ 362nd day after the date of filing; or
 - (2) by the Planning Commission or council before the ~~181st~~ 362nd day after the date on which the Planning Commission or council grants an indefinite postponement of a scheduled public hearing.
- (B) Except as provided in Subsection (D), a neighborhood plan amendment application expires if the council does not adopt an ordinance before the 361st day after council closes the public hearing on the application.
- (C) Except as provided in Subsection (D), a neighborhood plan amendment application initially submitted before the effective date of this section expires 180 days after the effective date of this section.
- (D) An applicant may file one request with the director and one request with council to extend an application that will expire under Subsection (B) or Subsection (C). The request must be in writing, be filed before the application expires, state good cause for the extension, and be for not more than 180 days.

Source: 20091217-053.

§ 25-1-808 LAND USE COMMISSION PUBLIC HEARING AND RECOMMENDATION.

- (A) The Land Use Commission shall hold a public hearing on a neighborhood plan amendment application not later than the ~~90th~~ 120th day after the date the application is filed.
- (B) The Land Use Commission shall make a recommendation to the council on a neighborhood plan amendment application not later than the 14th day after the Land Use Commission closes the public hearing on the application.
- (C) If the Land Use Commission does not adopt a recommendation on an application, the Director shall forward the application to council without a Land Use Commission recommendation.
- (D) If the Land Use Commission does not hold a public hearing in accordance with Subsection (A), the applicant may file a written request for a hearing as prescribed in Section 25-2-282(E).
- (E) The Director shall report the Land Use Commission's recommendation on each neighborhood plan amendment application to the council.

Source: 20091217-053.

§ 25-1-809 CITY COUNCIL HEARING AND RECOMMENDATION.

- (A) The council shall hold a public hearing on a neighborhood plan amendment application not later than the ~~40th~~ 80th day after the date of the Land Use Commission recommendation.
- (B) Section 25-2-283(C) shall apply to requests for postponement of the public hearing on a neighborhood plan amendment application.

Source: 20091217-053.



HOUSING & PLANNING

Affordability Impact Statement

Zoning Application Processes and Deadlines

Case number: C20-2023-020

Initiated by: Resolution No. 20230608-078

August 10, 2023

Proposed Regulation

The proposed ordinance:

- Creates six-month pilot program that will extend application deadlines and expiration dates for zoning applications, as specified in Resolution No. 20230608-078
 - Zoning application expiration date changed from 181 to 362 days after filing
 - Land Use Commission public hearing deadline changed from 60 to 120 days after filing
 - Council public hearing deadline changed from 40 to 80 days after Land Use Commission hearing
- Authorizes the city manager to send these amendments to planning commission and skip other commissions

Land Use/Zoning Impacts on Housing Costs

Positive Negative Neutral

Temporarily increasing the amount of time in which staff reviews zoning applications may appear to increase the development timeline. However, historically high volumes of zoning applications coupled with staff shortages render a shorter timeline infeasible. This change will thus result in the City providing realistic expectations to manage the unprecedented situation, and provide staff, applicants, and neighbors with time to address any

	<p>concerns before the applications are officially noticed, scheduled, and reviewed.</p> <p>Doubling the amount of time that an application may be “active” before it expires will lower the number of applications that will expire because they need additional review time.</p>
Impact on Development Cost	<input type="checkbox"/> Positive <input type="checkbox"/> Negative <input checked="" type="checkbox"/> Neutral
Impact on Affordable Housing	<input type="checkbox"/> Positive <input type="checkbox"/> Negative <input checked="" type="checkbox"/> Neutral
Other Policy Considerations	None.
Manager's Signature <u>Marla Torrado</u>	