

ORDINANCE NO. 920903- D

AN ORDINANCE CODIFYING THE SOS ORDINANCE AS APPROVED BY THE QUALIFIED VOTERS OF THE CITY ON AUGUST 8, 1992; AMENDING THE AUSTIN CITY CODE OF 1992 TO EFFECTUATE SAID SOS ORDINANCE; WAIVING THE APPLICATION OF SECTIONS 2-2-3, 2-2-5, 2-2-7, AND 13-1-981 OF THE AUSTIN CITY CODE OF 1992; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 13-7 (Environmental Protection and Management) Article I (Water Quality) of the Austin City Code of 1992 is hereby amended to codify the SOS Ordinance by adding a new Division 5 to hereafter read as follows:

Division 5. SOS ORDINANCE

Sec. 13-7-36.1 TITLE AND PURPOSE

- (a) This Division, to be known as the SOS Ordinance, sets out special requirements for development of land in watersheds within the City's planning jurisdiction which contribute to Barton Springs.
- (b) Sections 13-7-36.3 through 13-7-36.13 codify the Save Our Springs Initiative Petition Ordinance as adopted by popular vote on August 8, 1992.

Sec. 13-7-36.2 AMENDMENT

This Division shall not be repealed or amended by City Council until two years after the effective date of the SOS Ordinance, August 10, 1992. Thereafter, this Division may be repealed or amended only by an affirmative vote of a three-quarters majority of the City Council.

Sec. 13-7-36.3 DECLARATION OF INTENT

The people of the City of Austin declare their intent to preserve a clean and safe drinking water supply, to prevent further degradation of the water quality in Barton Creek, Barton Springs, and the Barton Springs Edwards Aquifer, to provide for fair, consistent, and cost-effective administration of the City's watershed protection ordinances, and to promote the public health, safety, and welfare. The City of Austin recognizes that the Barton Springs Edwards Aquifer is more vulnerable to pollution from urban development than any other major groundwater supply in Texas, and that the measures set out in this ordinance are necessary to protect this irreplaceable natural resource.

Sec. 13-7-36.4 POLLUTION PREVENTION REQUIRED

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

of total suspended solids, total phosphorus, total nitrogen, chemical oxygen demand, biochemical oxygen demand, total lead, cadmium, fecal coliform, fecal streptococci, volatile organic compounds, total organic carbon, pesticides, and herbicides from the site. For a given project, impervious cover shall be reduced if needed to assure compliance with these pollutant load restrictions.

(b) Within the watersheds contributing to Barton Springs, Section 13-7-23 of the Land Development Code is amended so that in no event shall the boundary of the critical water quality zone be less than 200 feet from the centerline of a major waterway or be less than 400 feet from the centerline of the main channel of Barton Creek. No pollution control structure, or residential or commercial building, may be constructed in the critical water quality zone in these watersheds.

Sec. 13-7-36.5 NO EXEMPTIONS, SPECIAL EXCEPTIONS, WAIVERS OR VARIANCES

The requirements of this ordinance are not subject to the exemptions, special exceptions, waivers, or variances allowed by Article V of Chapter 13-2 of the Land Development Code. Adjustments to the application of this ordinance to a specific project may be granted only as set out in Section 13-7-36.8 below.

Sec. 13-7-36.6 APPLICATION TO EXISTING TRACTS, PLATTED LOTS, AND PUBLIC SCHOOLS

(a) This ordinance does not apply to development on a single platted lot or a single tract of land that is not required to be platted before development if: (1) the lot or tract existed on November 1, 1991, and (2) the development is either:

- (i) construction, renovation, additions to, repair, or development of a single-family, single-family attached, or a duplex structure used exclusively for residential purposes, and construction of improvements incidental to that residential use; or,
- (ii) development of a maximum of 8,000 square feet of impervious cover, including impervious cover existing before and after the development.

(b) This ordinance does not apply to development of public primary or secondary educational facilities if the City and the school district enter into a development agreement approved by a three-quarters vote of the City Council protecting water quality pursuant to Section 13-2-502(o)(7) of the Land Development Code.

Sec. 13-7-36.7 EXPIRATION OF PRIOR APPROVALS

Within the watersheds contributing to Barton Springs, the following provisions shall govern the expiration of certain prior approvals:

A. Previously Approved Preliminary Subdivision Plan:

(a) Unless it has or will have expired sooner, a preliminary subdivision plan initially approved before the effective date of this ordinance expires one year after the effective date of this ordinance, or two years after its initial approval, whichever date is later, unless an application for final plat approval is filed before this expiration date and a final plat is approved no later than 180 days after filing.

(b) No approved preliminary plan, and no portion of an approved preliminary plan, shall be valid or effective after the expiration date established by this part, or shall be

extended, revised, or renewed to remain effective after the expiration date, except according to subpart C.

B. Previously Approved Site Plan:

(a) Unless it has or will have expired sooner, a site plan or phase or portion thereof initially approved before the effective date of this ordinance shall expire one year after the effective date of this ordinance, or three years after its initial approval, whichever date is later, unless:

- (1) an application is filed before this expiration date for building permits for all structures shown on the site plan or phase or portion thereof and designed for human occupancy, and the building permits are approved and remain valid and certificates of occupancy are issued no later than two years after this expiration date; or,
- (2) If no building permits are required to construct the structures shown on a site plan described in subpart (a), construction begins on all buildings shown on the site plan or portion or phase thereof before this expiration date, and the buildings are diligently constructed and completed, and certificates of compliance or certificates of occupancy are issued no later than two years after this expiration date.

(b) No approved site plan, and no separate phase or portion of an approved site plan, shall be valid or effective after the expiration date established by this part, or shall be extended, revised, or renewed to remain effective after the expiration date, except according to subpart C.

C. Approved Plans Which Comply:

An approved preliminary subdivision plan, portion of a preliminary plan, approved site plan, or separate phase or portion of an approved site plan that complies with this ordinance or that is revised to comply with this ordinance does not expire under subpart A or subpart B and remains valid for the period otherwise established by law.

Sec. 13-7-36.8 LIMITED ADJUSTMENT TO RESOLVE POSSIBLE CONFLICTS WITH OTHER LAWS

(a) This ordinance is not intended to conflict with the United States Constitution or the Texas Constitution or to be inconsistent with federal or state statutes that may pre-empt a municipal ordinance or the Austin City Charter.

(b) The terms of this ordinance shall be applied consistently and uniformly. If a three-quarters majority of the City Council concludes, or a court of competent jurisdiction renders a final judgment concluding, that this ordinance, as applied to a specific development project or proposal, violates a law described in subpart (a), then the City Council may, after a public hearing, adjust the application of this ordinance to that project to the minimum extent required to comply with the conflicting law. Any adjustment shall be structured to provide the maximum protection of water quality.

Sec. 13-7-36.9 CONSTRUCTION OF ORDINANCE

This ordinance is intended to be cumulative of other City ordinances. In case of irreconcilable conflict in the application to a specific development proposal between a provision of this ordinance and any other ordinance, the provision which provides stronger water quality

controls on development shall govern. If a word or term used in this ordinance is defined in the Austin City Code of 1981, as that code was in effect on November 1, 1991, that word or term shall have the meaning established by the Austin City Code of 1981 in effect on that date, unless modified in this ordinance.

Sec. 13-7-36.10 REDUCE RISK OF ACCIDENTAL CONTAMINATION

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

Sec. 13-7-36.11 EFFICIENT AND COST-EFFECTIVE WATER QUALITY PROTECTION MEASURES

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

Sec. 13-7-36.12 SEVERABILITY

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

Sec. 13-7-36.13 ADOPTION OF WATER QUALITY MEASURES

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

PART 2. The Austin City Code of 1992 is hereby amended to effectuate the SOS Ordinance as follows:

[1] Amend the title of Chapter 13-1 Article V (Appeals, Variances, and Special Exceptions); and the title of Chapter 13-1 Article V, Division 3 (Special Exceptions) to read as follows:

ARTICLE V. APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND ADJUSTMENTS

DIVISION 3. SPECIAL EXCEPTIONS AND ADJUSTMENTS

[2] Add new Sections 13-1-304 and 13-1-305 to read as follows:

Sec. 13-1-304 APPLICATION FOR ADJUSTMENT

(a) An application for an adjustment authorized by the Land Development Code shall be considered only in connection with the review of a site plan or subdivision.

(b) An application for an adjustment shall be submitted to the Director on a form provided by the Director and shall be considered only in connection with the review of a specific development project or proposal in the Barton Springs Zone.

(c) An application for an adjustment shall include:

- (1) the name and address of the applicant and owner;
- (2) the address and legal description of the property in which the specific development project or proposal is located;
- (3) adequate proof that the applicant is either the owner of record or the authorized agent of the owner;
- (4) a review fee, as established by ordinance;
- (5) the specific section(s) of the Land Development Code which, as applied to the development project or proposal, the applicant asserts violate(s) the United States Constitution, the Texas Constitution, federal or state statutes;
- (6) the specific provision(s) of the United States Constitution, the Texas Constitution, federal or state statutes which the applicant asserts are violated by application of the Land Development Code to the development project or proposal;
- (7) a statement including a complete factual basis supporting applicant's assertions;
- (8) a legal brief supporting applicant's assertions; and,
- (9) the specific adjustment requested, along with an explanation of how the requested adjustment is limited to the minimum extent required to comply with the conflicting law, and how it provides the maximum protection of water quality.

Sec. 13-1-305 CONSIDERATION OF AN APPLICATION FOR ADJUSTMENT

An application for adjustment is considered in accordance with a two phase process, as hereinafter described:

(a) **PHASE ONE:**

- (1) The applicant submits a complete application for adjustment to the Director, as set forth in Section 13-1-304.
- (2) The application for adjustment is reviewed by the Law Department.
- (3) The application for adjustment, along with the recommendation of the City Manager is presented to the City Council to determine whether application to

the applicant's development project or proposal of the SOS Ordinance in Chapter 13-7, Article I, Division 5 violates the United States Constitution, the Texas Constitution, federal or state statutes. An affirmative determination must be supported by a three-quarters majority vote of the City Council.

- (4) If an affirmative determination is made in accordance with subsection (a) (3) above, the application moves forward to Phase Two, if not, the application for adjustment is denied.

(b) PHASE TWO:

- (1) The application for adjustment is reviewed by the Environmental and Conservation Services Department.
- (2) The application for adjustment, along with the recommendation of the City Manager is presented to the City Council at a public hearing. After the public hearing, the City Council determines the minimum adjustment required to comply with the conflicting law and provide maximum protection of water quality, and grants such adjustment to the applicant.

[3] Add a new Section 13-1-615.1 to read as follows:

Sec. 13-1-615.1 EXPIRATION OF SITE PLAN IN THE BARTON SPRINGS ZONE

Subject to the provisions in Section 13-7-36.8(a) regarding consistency with state and federal law, expiration of approved site plans in the Barton Springs Zone is governed by Section 13-7-36.7.

[4] Amend Section 13-1-489 (Expiration of Approved Preliminary Plan) to hereafter read as follows:

Sec. 13-1-489 EXPIRATION OF APPROVED PRELIMINARY PLAN

- (a) Approval of a preliminary plan expires unless an application for final plat approval for all or a portion of the preliminary plan is filed no later than two years after the date it was approved and a final plat is approved.
- (b) Except in the Barton Springs Zone, the Commission, for good cause, may grant a single one year extension to the deadline established by subsection (a) if requested by the applicant before the preliminary plan has expired.
- (c) Subject to the provisions in Section 13-7-36.8(a) regarding consistency with state and federal law, expiration of approved preliminary plans in the Barton Springs Zone is governed by Section 13-7-36.7.

[5] Amend Section 13-2-502 (Exemptions) to hereafter read as follows:

Sec. 13-2-502 EXEMPTIONS

- (a) This Article shall not apply to watersheds defined as Urban; development in the Urban Watersheds, however, is subject to all the requirements of the Town Lake Critical Water Quality Zone. Additionally, all commercial and multifamily development within 500 feet of the 429.0 foot contour of Town Lake must provide water quality controls in accordance with Sec. 13-7-18.

(b) Except as provided in subsections (c), (d) and (e), this Article shall not apply to any development for which:

- (1) a preliminary plan, final plat, site development permit, Travis County development permit, zoning site plan, planned unit development, planned development agreement, or development phasing agreement was approved by the applicable governmental authority, before May 18, 1986;
- (2) a land use plan for an out-of-City MUD was approved by the City Council after a public hearing which occurred before May 18, 1986; or,
- (3) a land use plan with permanent zoning for an in-City MUD was approved by the City Council before May 18, 1986.

(c) This Article shall apply to subdivisions and site developments that were approved before May 18, 1986, and propose to withdraw water from the South Edwards Aquifer, and propose residential development other than single-family, with a maximum density of two units per acre.

(d) Development otherwise exempt under subsection (b) loses its exemption unless, before May 18, 1991, the development:

- (1) has or obtains a site development permit or building permit;
- (2) has or obtains an approved final plat for at least 50% of the land area of the development shown on the preliminary plan; or,
- (3) has or obtains permanent zoning tied to a site plan; or,
- (4) is or becomes part of an approved site plan or land use plan for a planned unit development, municipal utility district, planned development agreement, or development phasing agreement.

(e) This Article shall not apply to the subdivision of land that proposes a residential density of not more than a single, one-family housing unit for every five acres and is appropriately restricted to that residential density.

(f) This Article shall not apply to the resubdivision of land or the reconfiguration of a development plan otherwise exempted by this section which does not result in an overall increase in the number of residential units or impervious cover above that on the exempted subdivision or plan. This article shall not apply to tracts otherwise exempted from these provisions that are reconfigured by right-of-way condemnation. Development lost due to the condemnation may be replaced on the remaining tract to the extent that the replacement does not exceed that of the approved subdivision, plan or development. Applicants may change lot sizes and dimensions, roadway alignments, subdivide commercial and multifamily lots into smaller lots, and reallocate impervious cover or transfer density among lots so long as the overall impervious cover and number of residential units on the originally approved plan do not increase. In addition, areas reserved for wastewater irrigation and not restricted against future development may be subdivided and resubdivided when no longer needed for irrigation purposes; provided, however the subdivision or resubdivision of such irrigable area shall be required to comply with this Article.

(g) Development exempt from this Article under this section is governed by the applicable watershed ordinance, if any, in effect on May 18, 1986. Development exempt under subsection (e) is not subject to any watershed ordinance.

- (h) The impervious cover limits of this Article shall not apply to roadway construction pursuant to the City Capital Improvements Program if the limits would require the condemnation of adjacent pervious land.
- (i) This Article shall not apply to a legal lot; provided, however, that the provisions of this Article are applicable to a lot exempt under this subsection (i) if the lot is subdivided after May 18, 1986.
- (j) This Article shall not apply to the development of any tract of land previously exempted from the requirements of Ordinance 840308-K (Lake Travis Watershed Ordinance) by specific action of the City Council.
- (k) Notwithstanding any other provisions of this section, any final plat approved before May 18, 1986, but for which a site development permit, building permit, or site plan has not been approved by May 18, 1996, is subject to the provisions of this Article.
- (l) The impervious cover provisions of this Article shall not apply to any public school district project. No provision of this Article shall apply to any public school district project on a site acquired by the public school district before May 18, 1986.
- (m) Even though it is otherwise exempt under this section, a commercial or multifamily development with more than 20% impervious cover must provide water quality control in accordance with Section 13-7-18. The requirement of this subsection (m) does not apply to:
- (1) construction of subdivision infrastructure in an exempt subdivision pursuant to approved subdivision construction plans; or,
 - (2) development within an Urban watershed.
- (n) Development in the Barton Creek Watershed or Barton Springs Zone which, prior to October 27, 1991, was not subject to any previous City watersheds regulations, shall comply with this Code.
- (o) Notwithstanding any other provisions of this section, but subject to (p) below, development within the Barton Springs Zone or the Barton Creek Watershed shall be exempt from the provisions of this Article only if it meets one or more of the following additional exemption provisions:
- (1) Final plats of single family or duplex development approved prior to May 18, 1991.
 - (2) Development with a specific unexpired special exception or unexpired waiver which has been previously granted by the City Council.
 - (3) Single Family development that proposes residential lots of no less than five acres per lot and is appropriately restricted to that residential density.
 - (4) Development exempt pursuant to state law.
 - (5) Development of a parcel of land not legally subdivided, which is not required to be subdivided under Local Government Code Chapter 212, or prior to state subdivision statute, where said parcel of land has an unexpired Council approved site plan on October 27, 1991.
 - (6) Development exempt pursuant to 13-2-502(b) and (d), or (f), subject to (k),

provided that the development was subject to a previous watershed ordinance which required water quality controls.

- (7) Facilities by a school district which enters into a development agreement with the City of Austin pursuant to Section 212.902 of the Texas Local Government Code, which agreement includes water quality protection with the goal of achieving the intent of this Article and Chapter 13-7, Article I.
- (8) Development exempt under (2), (5), or (6) above, and which prior to October 27, 1991 was subject to previous City watershed regulations, shall:
- (i) improve water quality treatment of required water quality controls by increasing the capture volume as described in Section 13-7-18(f)(6);
 - (ii) comply with the fiscal security requirements of the required controls as described in Section 13-7-7;
 - (iii) comply with the maintenance, inspection and operating permit requirements of Section 13-7-9 and 13-7-11; and,
 - (iv) comply with the erosion and sedimentation control requirements of Section 13-7-14.
- (p) Notwithstanding any other provisions of this section, the SOS Ordinance in Chapter 13-7, Article I, Division 5 shall apply to development within the Barton Springs Zone except as provided in Sections 13-7-36.6 or 13-7-36.8.

- (q) Development in the Barton Creek Watershed or Barton Springs Zone which is subject to Ordinance 860508-V, as amended, shall be subject to the following additional requirement:

Said development shall improve water quality treatment of required water quality controls by increasing the capture volume as described in Section 13-7-18(f)(6), shall comply with the fiscal security requirements for the required controls as described in Section 13-7-7, shall comply with the maintenance, inspection and operating permit requirements of Sections 13-7-9 and 13-7-11 and shall comply with the erosion sedimentation control requirements of Section 13-7-14.

- [6] Amend Section 13-2-503 (Special Exceptions; Waivers) to hereafter read as follows:

Sec. 13-2-503 SPECIAL EXCEPTIONS; WAIVERS

(a) A special exception from the provisions of this Article may be granted in accordance with the provisions of Chapter 13-1; provided that no special exception may be granted from the SOS Ordinance in Chapter 13-7, Article I, Divisions 5.

(b) A development for which some or all of the requirements of this Article were waived pursuant to previous City Code Sec. 13-15-208 becomes subject to the waived requirements unless, within five years from May 18, 1986, the development:

- (1) has or obtains a site plan or building permit; or,
- (2) has or obtains an approved final plat and site plan for at least 50% of the land area of the development shown on the preliminary plan; or,
- (3) has or obtains permanent zoning tied to a site plan; or,

- (4) is or becomes part of an approved site plan or land use plan for a planned unit development, municipal utility district, planned development agreement, or development phasing agreement.

(c) Notwithstanding the approval of a waiver to previous City regulations or of a special exception under this section, commercial or multifamily development with more than 20% impervious cover must provide water quality controls in accordance with Sec. 13-7-18.

[7] Amend Section 13-2-505 (Planning Commission Variances) to hereafter read as follows:

Sec. 13-2-505 PLANNING COMMISSION VARIANCES

(a) Subject to (e) and (f) below, the Planning Commission may grant a variance from one or more requirements of this Article and of Chapter 13-7, Article I, in accordance with the procedures outlined in Chapter 13-1 and subject to subsection (b), (e) and (f). To grant a variance, the Commission shall find that, because of special circumstances applicable to the property involved, a strict application of the provisions of this Article and of Chapter 13-7, Article I, prevents the owner of the property from enjoying the privileges or safety associated with other similarly situated property with similarly timed development. Where such conditions are found, the variance permitted shall be the minimum departure from the terms of this Article and other requirements of this Land Development Code necessary to avoid such deprivation of privileges enjoyed by other property owners and to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences. The Planning Commission may not grant a variance if it provides the applicant with any special privileges not enjoyed by other similarly situated property with similarly timed development, or if the basis of the variance is a special or unique condition created as a result of the method by which a person voluntarily subdivides or develops land.

(b) Subject to subsection (f), in accordance with the procedures outlined in Chapter 13-1, the Planning Commission may grant a variance from the provisions of Sections 13-2-523, 13-2-543, 13-2-563, or 13-7-23, if the Commission finds that the application of such provisions leaves the property owner without any reasonable, economic use of the entire property. Where such conditions are found, the variance permitted shall be the minimum departure from the terms of this Article and other ordinance requirements necessary to establish a reasonable, economic use of the entire property.

(c) The applicant has the burden of proving his or her entitlement to the variance.

(d) The Planning Commission shall prepare written findings of fact justifying the grant or denial of each variance request.

(e) Notwithstanding any other provisions of this section, within the Barton Creek Watershed or the Barton Springs Zone no variance shall be granted if it does not result in water quality equal to or better than would be achieved under compliance with this Code without the variance requested.

(f) Notwithstanding any other provisions of this section, in the Barton Springs Zone, no variance shall be granted from the SOS Ordinance in Chapter 13-7, Article I, Division 5.

[8] Amend Section 13-2-506 (Administrative Variances) to hereafter read as follows:

Sec. 13-2-506 ADMINISTRATIVE VARIANCES

(a) The Director of the Department of Environmental and Conservation Services may grant a variance from the provisions of Sections 13-2-303(m), 13-2-543(d), 13-5-91(b), 13-7-15(d),

13-7-20(a), or 13-7-23(d) (as it relates to water quality controls), when a variance is determined to be consistent with the standards and intent of the pertinent section. The denial by the Director of a variance requested under this section is not subject to appeal; however, the requested variance may be granted by the Commission pursuant to the provisions of Sec. 13-2-505.

(b) The Director of the Department of Environmental and Conservation Services shall make written findings justifying the grant or denial of each variance.

(c) The Director of the Department of Environmental and Conservation Services shall prepare and maintain for public inspection:

- (1) A written summary of variances granted and denied under Sec. 13-2-505 and this section; and,
- (2) The contents of the files, including the appeal record if there was an appeal, for each variance on which action was taken by the Planning Commission.

(d) Notwithstanding any other provisions of this section, within the Barton Creek Watershed or the Barton Springs Zone no variance shall be granted if it does not result in water quality equal to or better than would be achieved under compliance with this Code without the variance requested.

(e) Notwithstanding any other provisions of this section, in the Barton Springs Zone, no administrative variance shall be granted from the SOS Ordinance in Chapter 13-7, Article I, Division 5.

[9] Amend the title of Chapter 13-2 (Land Use), Article V (Water Quality Related Development Intensities) Division 5. (Barton Creek Watershed), to hereafter read: Division 5. Barton Springs Zone.

[10] Amend Section 13-2-580 (Compliance) to hereafter read as follows:

Sec. 13-2-580 COMPLIANCE

All development located in the Barton Springs Zone must comply with the provisions of this Division and the SOS Ordinance in Chapter 13-7, Article I, Division 5.

[11] Amend Section 13-2-581 (Waterway Definitions) to read as follows:

Sec. 13-2-581 WATERWAY DEFINITIONS

Minor, intermediate, and major waterways are designated for any channel, creek, stream, branch, or watercourse according to drainage area as follows:

<u>Waterway</u>	<u>Drainage Area Acres</u> <u>Barton, Little Bear,</u> <u>Onion, Bear & Little</u> <u>Barton Watersheds</u>	<u>Slaughter and Williamson</u> <u>Watersheds</u>
Minor	64-320	128-320
Intermediate	320-640	320-640
Major	Over-640	Over 640

[12] Amend Section 13-2-584 (Uplands Zone) to hereafter read as follows:

Sec. 13-2-584 UPLANDS ZONE

- (a) All development in the uplands zone must meet the pollution prevention standards as defined in Section 13-7-36.4.
- (b) Development limitations including impervious cover shall not exceed the limits set forth in Section 13-7-36.4.

[13] Amend Section 13-2-585 (Transfer of Development Intensity) to hereafter read as follows:

Sec. 13-2-585 TRANSFER OF DEVELOPMENT INTENSITY

In the Barton Springs Zone there shall be no transfer of development rights unless granted by an adjustment pursuant to Section 13-7-36.8.

[14] Amend Sec. 13-2-540 (Compliance) to read as follows:

Sec. 13-2-540 COMPLIANCE

All development located in watersheds designated herein as Water Supply suburban must comply with the provisions of this Division, according to the following subcategories:

- (1) Class I: Bull, West Bull, Dry (North), Dry (West), Taylor Slough, other Lake Austin (east side from Tom Miller Dam to Bull Creek), Town Lake (north side from Johnson Creek to Tom Miller Dam), and Town Lake (south side from Barton Creek to Tom Miller Dam).
- (2) Class II: No watersheds are currently classified as Class II.
- (3) Class III: Those portions of the Lake, Rattan, Buttercup, and Brushy Creek watersheds which are located in the Edwards Aquifer recharge or contributing zones.

[15] Amend Section 13-2-541 (Waterway Definitions) to read as follows:

Sec. 13-2-541 WATERWAY DEFINITIONS

Minor, intermediate, and major waterways are designated for any channel, creek, stream, branch, or watercourse according to Class I, II, or III designation and drainage area as follows:

Drainage Area (Acres)

<u>Waterway</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>
Minor	128-320		320-640
Intermediate	320-640	RESERVED	640-1280
Major	Over 640		Over 1280

[16] Amend Section 13-2-543 (Water Quality Transition Zone) to read as follows:

Sec. 13-2-543 WATER QUALITY TRANSITION ZONE

(a) Water quality transition zones are established parallel to all critical water quality zones, except along the shorelines of Lake Austin and Town Lake, and extend from the outer boundaries of the critical water quality zone for 300 feet along major waterways, 200 feet along intermediate waterways, and 100 feet along minor waterways.

(b) No development other than that permitted in the Critical Water Quality Zone is permitted in the water quality transition zone where such zone lies over the South Edwards Aquifer recharge zone.

(c) Except as restricted by subsection (b), the projected impervious cover in any development or portion thereof that lies within the water quality transition zone shall not exceed the following maximums within the zone, exclusive of land within a 100 year floodplain:

Class I:

Impervious Cover: 18%

(d) No water quality controls which serve development in the uplands or transition zone are permitted in the water quality transition zone.

[17] Amend Section 13-2-544 (Uplands Zone) to read as follows:

Sec. 13-2-544 UPLANDS ZONE

(a) The projected impervious cover for all one-family residential development of land in the uplands zone with minimum lot sizes of 5,750 square feet or more shall not exceed the maximums specified below based on the net site area, or the maximums specified if transfers of development intensity are made in accordance with Sec. 13-2-545:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover	30%	45%
With Transfer:	40%	50%

(b) The projected impervious cover for all one-family and two-family residential development of land in the uplands zone, other than those subject to subsection (a), shall not exceed the maximums specified below based on the net site area, or the maximums specified if transfers of development intensity are made in accordance with Sec. 13-2-545:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover	30%	55%
With Transfer:	40%	60%

(c) The projected impervious cover for multifamily residential development of land in the uplands zone shall not exceed the maximums specified below based on the net site area, or the maximums specified if transfers are made in accordance with Sec. 13-2-545:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover	40%	60%
With Transfer:	55%	65%

(d) Except as provided by subsections (e) and (f) below, the projected impervious cover for commercial development of land in the uplands zone shall not exceed the maximums specified below based on the net site area, or the maximums specified if transfers are made in accordance with Sec. 13-2-545:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover	40%	60%
With Transfer:	55%	70%

(e) Notwithstanding subsection (d), the projected impervious cover for retail commercial development in Class I watersheds shall not exceed 50% of the net site area, or 60% if transfers of development intensity are made in accordance with Sec. 13-2-545, for all land within 1,000 feet of the right-of-way of two intersecting roadways, each designated as a major arterial, parkway, expressway, or freeway in the Austin Metropolitan Area Roadway Plan, as in effect on January 1, 1986, where at least one of the roadways is designated a parkway, expressway, or freeway, limited, however, to intersections which are located within the City Limits of the City of Austin or which are annexed thereto at a later date or which request limited or full purpose annexation at the time for final plat approval.

(f) Notwithstanding subsection (d), the projected impervious cover for retail commercial development in Class I watersheds shall not exceed 60% of the net site area, or 70% if transfers of development intensity are made in accordance with Sec. 13-2-545, for all land within 1,500 feet of the right-of-way of two intersecting roadways maintained by the State, where such intersections are located within the City Limits of the City of Austin or are annexed thereto at a later date or which request limited or full purpose annexation at the time of final plat approval.

(g) The distances specified from the above intersections are intended to create 1,000 foot squares at each corner under subsection (e) and 1,500 foot squares at each corner under subsection (f), for impervious cover calculations purposes.

(h) Impervious cover allowances for development subject to subsections (e) and (f) shall be pro-rated according to retail, other commercial, or residential land uses within those areas when mixed-use development is proposed.

(i) Nothing herein limits the authority of the Council in the zoning process to limit impervious cover below the maximum specified for tracts determined by the Council to be particularly sensitive environmentally, including but not limited to, having a critical water quality zone or critical environmental feature on or near the site.

[18] Amend Section 13-2-545 (Transfer of Development Intensity) to read as follows:

Sec. 13-2-545 TRANSFER OF DEVELOPMENT INTENSITY

(a) For every one acre of land in the critical water quality zone dedicated to the City in fee simple and accepted by the City, the applicant is entitled to additional impervious cover on lands in the uplands zone as follows:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover: (Square Feet)	15,000	20,000

Dedication of land under this section may be credited toward satisfaction of the requirements of the parkland dedication requirements of Article IV, Division 2, Part B in accordance with the *Administrative Manual*.

(b) Except as limited in subsection (c) for every one acre of land in the water quality transition zone left undeveloped and undisturbed and included in impervious cover calculations elsewhere, the applicant is entitled to additional impervious cover on lands in the uplands zone as follows:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover: (Square Feet)	15,000	20,000

(c) A maximum of 85% of the transfer credit otherwise available under subsection (b) is permitted for golf courses and other recreational uses if restored using predominantly native plants and grasses and if the applicant provides a plan for minimizing the use of pesticides, herbicides, and fertilizers. A maximum of 50% of the transfer credit otherwise available under subsection (b) is permitted for land used for wastewater disposal.

(d) For every one acre of land in the uplands zone located within a buffer of a critical environmental feature and left natural and undisturbed, the applicant is entitled, in addition to net site area calculations for that land, to additional impervious cover on lands elsewhere in the uplands zone as follows:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover: (Square Feet)	15,000	20,000

(e) For every one acre of land in the uplands zone utilized for wastewater irrigation, restricted against any future development, and left in a natural state (other than for necessary irrigation lines and tailwater control berms), the applicant is entitled to additional impervious cover elsewhere in the uplands zone as follows:

	<u>Class I:</u>	<u>Class III:</u>
Impervious Cover: (Square Feet)	15,000	20,000

(f) Development intensity may not be transferred to a receiving tract whose boundary is beyond a one mile radius from the transferring tract unless the tracts are either contiguous and under single ownership or are not separated by and owned by someone other than the applicant.

(g) Development intensity rights may not be transferred unless the transferring tract is platted concurrently with the receiving tract and all rights are transferred from the transferring tract at that time. A transfer of development intensity rights must be noted on both the plat of the transferring and receiving tract, in a manner satisfactory to the Director of the

Department of Planning and Development, and the subdivider must file in the deed records a restrictive covenant, in form and substance approved by the City Attorney, running with the transferring tract and noting the transfer of development intensity rights from the tract.

[19] Amend Section 13-2-565 (Transfer of Development Intensity) to read as follows:

Sec. 13-2-565 TRANSFER OF DEVELOPMENT INTENSITY

(a) Except as limited by (c) below, for every one acre of land in the critical water quality zone or water quality transition zone which is dedicated to the city or another in fee simple and the gift is approved by the city, the applicant is entitled to an additional one single-family residential housing unit or to an additional 6,000 square feet of impervious cover for commercial or multifamily residential development in the uplands zone. Dedication of land under this section may be credited toward satisfaction of the requirements of the parkland dedication requirements of Article IV, Division 2, Part B in accordance with the Administrative Manual.

(b) Except as limited by subsection (c) below, for every one acre of land in the water quality transition zone left undeveloped and undisturbed and included in density calculations elsewhere, the applicant is entitled to one additional single-family residential housing unit or to an additional 6,000 square feet of impervious cover for commercial or multifamily residential development in the uplands zone. Parkland gifts in subsection (a) are counted separately from this provision and the transfers are cumulative.

(c) A maximum of 85% of the transfer credits for water quality transition zone land otherwise available under subsection (b) is permitted for golf courses and other recreational uses if restored using predominantly native plants and grasses and if the applicant provides a plan for minimizing the use of pesticides, herbicides, and fertilizers. A maximum of 50% of the transfer credit otherwise available under subsection (b) is permitted for land used for wastewater disposal, if within the water quality transition zone.

(d) For every one acre of land in the uplands zone which is located within a buffer of a critical environmental feature and which is a buffer of a critical environmental feature and which is left natural and undisturbed, the applicant is entitled, in addition to net site area calculations for that land, to one additional single family residential housing or an additional uplands zone.

(e) For every one acre of land in the uplands zone which is utilized for wastewater irrigation, is legally restricted against any future development, and leaves the irrigation area in a natural state (other than for necessary irrigation lines and tailwater control berms), the applicant is entitled to one additional single-family residential housing unit or to an additional 6,000 square feet of impervious cover for commercial or multifamily residential development elsewhere in the uplands zone.

(f) Development intensity rights may not be transferred unless the transferring tract is platted concurrently with the receiving tract and all rights are transferred from the transferring tract at that time. A transfer of development intensity rights must be noted on both the plat of the transferring and receiving tracts, in a manner satisfactory to the Director of the Department of Planning and Development, and the subdivider must file in the deed records a restrictive covenants, in form and substance approved by the City Attorney, running with the transferring tract and noting the transfer of development intensity rights from the tract.

[20] Amend Section 13-7-3 (Definitions) by amending the definitions of "Water Supply Rural Watersheds" and "Water Supply Suburban Watersheds" to read as follows:

Water supply rural watersheds means all watersheds identified as such on the map appearing at the end of this section, including watersheds draining to the Lake Austin (excluding areas on the east side of the lake south of and including Bull Creek), and Lake Travis.

Water supply suburban watersheds means all watersheds identified as such on the map appearing at the end of this section, including Bull, West Bull, Dry (North and West), Taylor Slough, Lake, and Rattan Creeks; the areas draining to Town Lake along the south side from Barton Creek to Tom Miller Dam; the north side of Town Lake from Johnson Creek to Tom Miller Dam; the east side of Lake Austin from Tom Miller Dam to Bull Creek, and Brushy Creek watershed located in the Edwards Aquifer recharge or contributing zones.

[21] Amend Section 13-7-6 (Variances; Special Exceptions; Hardship; Waivers) to hereafter read as follows:

Sec. 13-7-6 VARIANCES; SPECIAL EXCEPTIONS; HARDSHIP; WAIVERS

(a) The variance provisions of Sections 13-2-505 and 13-2-506 apply to this Article subject to the limitations contained therein regarding the Barton Springs Zone.

(b) Special exceptions from the provisions of this Article may be granted in accordance with Chapter 13-1, Article V, Division 3 subject to the limitations contained therein regarding the Barton Springs Zone.

(c) Waivers granted pursuant to previous Sec. 13-15-208 shall be subject to Sec. 13-2-503(b).

[22] Delete Sections 13-7-35 and 13-7-36 in their entirety.

[23] Amend Section 13-7-7 to hereafter read as follows:

Sec. 13-7-7 FISCAL SECURITY

Fiscal security shall be required for development in the Barton Springs Zone and Barton Creek Watersheds to ensure that water quality controls required under Section 13-7-18 are maintained properly. Fiscal shall be calculated based on the formula found in the Environmental Criteria Manual. The fiscal security shall be returned to the applicant no earlier than one year after completion of the development, and only upon the receipt of a certified engineering concurrence letter verifying that the controls are constructed in conformance with the approved design as verified after inspection by the City.

[24] Amend Section 13-7-11 (Inspection and Operating Permit) to hereafter read as follows:

Sec. 13-7-11 INSPECTION AND OPERATING PERMIT

(a) At least once each year, the City shall inspect the premises of each water quality control required to be maintained by the owner pursuant to Sec. 13-7-9.

(b) Any person or entity owning or operating commercial or multi-family development in the Barton Springs Zone or Barton Creek Watershed shall obtain and maintain in force an annual operating permit for the required water quality controls. A water quality control operating permit shall be granted or renewed after:

- (1) The applicant has filed with the Environment and Conservation Services Department a maintenance plan in accordance with the Environmental Criteria Manual; and,
- (2) The applicant has paid the permit fee as established by City Ordinance and supplied the necessary information to verify that the controls are in proper operating condition.

(c) The Permit may be transferred to owners/operators of the commercial or multi-family development only if the new owners/operators sign the permit, accept responsibility for the water quality controls at the time of transfer of the development, and document the transfer of the permit on a form provided by the City no more than thirty (30) days after the transfer of the development.

(d) No permit shall be granted or renewed until or unless the permit fee has been paid and the facility is in operating condition as designed. The City may inspect and/or accept a report from a registered engineer verifying that the water quality control is maintained properly. The fee shall be paid simultaneously with the filing of the application. No refund or rebate of a permit fee shall be allowed based upon denial of the permit, suspension or revocation of the permit, or discontinuance of use of a water quality control. The permit fee shall be sufficient to cover the cost of inspection of all of the water quality controls operated under the permit, and the required amount dedicated to this purpose.

[25] Amend Section 13-7-23 (Critical Water Quality Zones) to read as follows:

Sec. 13-7-23 CRITICAL WATER QUALITY ZONES

(a) A critical water quality zone shall be established along all intermediate, minor, and major waterways with drainage areas as classified by Sections 13-2-521, 13-2-541, 13-2-561, and 13-2-581. The boundary of the critical water quality zone is parallel to a waterway according to the size of the drainage basin, as follows:

- (1) for minor waterways, the boundary is the boundary of the 100 year floodplain; provided that the line shall be located no less than 50 feet and no more than 100 feet on either side of the centerline of the waterway;
- (2) for intermediate waterways, the boundary is the boundary of the 100 year floodplain; provided that the boundary shall be located no less than 200 feet on either side of the centerline of the waterway; and,
- (3) for major waterways, the boundary is the boundary of the 100 year floodplain; provided that the boundary shall be located no less than 200 feet and no more than 400 feet on either side of the centerline of the waterway.

Notwithstanding the above, subject to (b) below, in no event shall the critical water quality zone extend beyond the crest of a bluff.

(b) In the Barton Springs Zone, a critical water quality zone shall be established along all intermediate, minor, and major waterways with drainage areas as classified by Section 13-2-581. The boundary of the critical water quality zone is parallel to a waterway according to the size of the drainage basin, as follows:

- (1) for minor and intermediate waterways, the boundary is as set forth in subsections (a)(1) and (a)(2) above; and,

- (2) for major waterways, the boundary is as set forth in subsection (a)(3) above, subject to Section 13-7-36.4(b).

Notwithstanding the above, in no event shall the critical water quality zone extend beyond the crest of a bluff which is beyond the minimum boundary in Section 13-7-36.4(b).

(c) The floodplain delineation shall assume fully developed watershed conditions and shall be based on a channel in its unaltered state, unless modifications are approved pursuant to regulations adopted by the City Council.

(d) Critical water quality zones are established along Lake Travis, Lake Austin, and Town Lake. The boundary of the critical water quality zone is parallel to the normal pool levels of Lake Travis (681.0 foot contour), Lake Austin (492.8 foot contour), and Town Lake 429.0 foot contour), and extends a horizontal distance of 75 feet inland for proposed detached single-family residential development, and 100 feet for other residential or commercial development.

(e) Critical water quality zone shall remain free of all construction activity, development, and alterations, except that the following may be permitted:

- (1) Arterial, collector, and residential street crossings in the Urban Watersheds.
- (2) Arterial, collector, and residential street crossings only as provided below:

(A) Major waterways may be crossed by arterial streets that are identified in the Roadway Plan.

(B) Intermediate waterways may be crossed by arterial and collector streets. No collector street crossing shall be within 2,500 feet of any other collector or arterial street crossing on the same waterway. In Water Supply Suburban and Water Supply Rural watersheds, no collector street crossing shall be within one mile of any other collector or arterial street crossing on the same waterway.

(C) Minor waterways may be crossed by arterial and collector streets. No collector street crossing shall be within 1,000 feet of any other crossing of a collector or arterial street on the same waterway. In Water Supply Suburban and Water Supply Rural watersheds, no collector street crossing shall be within 2,000 feet of any other collector or arterial street crossing on the same waterway.

(D) Minor waterways may be crossed by a residential or commercial street only when necessary to provide access to property which cannot otherwise be safely accessed.

(E) The Director of the Department of Environmental and Conservation Services may vary these requirements prior to, or at the time of, plan approval, after receiving a report from the Public Works and Transportation Department.

- (3) Fences that do not obstruct flood flows.
- (4) Public and private parks, golf courses, and open spaces (excluding parking lots), when a program of fertilizer, pesticide, and herbicide use is approved by the Department of Planning and Development and the Department of Environmental and Conservation Services. In Water Supply Rural watersheds, park development is limited to trails and outdoor facilities (other than stables

and corrals for animals) for hiking, jogging, nonmotorized biking, and nature walks.

- (5) Boat docks, piers, wharves, or marinas, and necessary access and appurtenances, along Lake Travis, Lake Austin, and Town Lake, where otherwise authorized by this Land Development Code. All treated building materials that will be submerged in water must be approved by the Department of Environmental and Conservation Services prior to issuance of a permit or release of a site plan.
- (6) Detention basins, utility lines, maintenance, and floodplain alterations as permitted by Chapter 13-6 and other provisions of this Article.

(f) In the Urban Watersheds, the critical water quality zone (CWQZ) shall be established along all waterways with a drainage area equal to or greater than 64 acres. If the 100 year flood plain as delineated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps for the City of Austin is available and has a numbered A zone for the waterway in question, then it shall be established as the CWQZ. The boundary of the critical water quality zone is the 100 year flood plain; provided that the boundary shall be located no less than 50 feet and no more than 400 feet on either side of the centerline of the waterway. In the event that the 100 year flood plain is calculated by the applicant for an area covered by a FEMA map and is reviewed and approved by the City of Austin, then such calculated 100 year flood plain shall be established as the CWQZ. If no such FEMA 100 year flood plain is available, then the CWQZ shall be the lesser of the following:

- (1) The 100 year flood plain as calculated by the applicant and reviewed and approved by the City of Austin; or,
- (2) Any point within 100 feet of the centerline (or designated flowline) of the waterway.

(g) Except as required by Section 13-7-23(c) for Town Lake, critical water quality zones will not be established within the central business area, which for this purpose is defined as the area bounded by IH-35, Riverside Drive, Barton Springs Road, Lamar Boulevard, and 15th Street, exclusive of rights-of-way.

(h) Subject to Section 13-7-36.4, in the Barton Creek Watershed and Barton Springs Zone, the critical water quality zone shall remain free of all construction activity, development, and alterations, except that the following may be permitted:

- (1) Arterial, collector, and residential street crossings only as provided below:
 - (A) Major waterways may be crossed by arterial streets that are identified in the Roadway Plan.
 - (B) Intermediate waterways may be crossed by arterial and collector streets. No collector street crossing shall be within one mile of any other collector or arterial street crossing on the same waterway.
 - (C) Minor waterways may be crossed by arterial and collector streets. No collector street crossing shall be within 2,000 feet of any other collector or arterial street crossing the same waterway.
 - (D) Minor waterways may be crossed by a residential or commercial street only when necessary to provide access to property which cannot otherwise be safely accessed.

- (2) Fences that do not obstruct flood flows.
- (3) Public and private parks and open space (excluding parking lots), when a program of fertilizer, pesticide and herbicide use is approved by the Environmental and Conservation Services Department. Park development is limited to trails and outdoor facilities (other than stables and corrals for animals) for hiking, jogging, nonmotorized biking, and nature walks. Master planned parks reviewed by the Planning Commission and approved by the City Council may allow other recreational type development.
- (4) Boat docks, piers, wharves, or marinas, and necessary access, pedestrian bridges, bicycle and golf cart paths (excluding parking lots) where otherwise authorized by this Land Development Code. All chemicals used to treat building materials that will be submerged in water must be approved by the Environmental and Conservation Services Department prior to issuance of a permit or release of a site plan. An approved list is found in the Environmental Criteria Manual.
- (5) Utility lines are allowed when they are in compliance with the floodplain modification guidelines section of the Environmental Criteria Manual and when approved by the Director of the Department of Environmental and Conservation Services.
- (6) Notwithstanding any other provision of this subsection (h), no wastewater irrigation shall be allowed in the critical or transition zones.

[26] Amend Section 13-7-34 (Additional Requirements for Development in the Barton Creek Watershed) to read as follows:

Sec. 13-7-34 ADDITIONAL REQUIREMENTS FOR DEVELOPMENT IN THE BARTON SPRINGS ZONE

- (a) Development in the Barton Springs Zone shall comply with the water quality control and pollution prevention standards in Chapter 13-7, Article I, Division 5.
- (b) Water quality controls for the reduction of post-development pollutant load shall be designed, constructed, and maintained in accordance with the specifications in the Environmental Criteria Manual. Controls other than those described in the Environmental Criteria Manual shall be reviewed and approved by the Environmental and Conservation Services Department. Pollutant removal efficiencies of such controls shall be substantiated by the applicant through the use of values found in published literature or values from verifiable engineering studies.
- (c) Controls shall be located in sequence where needed to achieve the required removal rate. The sequence of controls shall be established based on criteria in the Environmental Criteria Manual or on sound engineering principles, such that the controls accomplish the intended purpose and minimize maintenance needs.
- (d) Compliance with this section shall be determined by an engineer in the Environmental and Conservation Services Department.

Part 3. In the event that any of the provisions of this ordinance is judicially declared to be unconstitutional, void, or otherwise invalid, it shall be automatically replaced by the comparable provisions that it replaced or amended as in effect August 8, 1992.

Part 4. The requirements imposed by Section 2-2-3, 2-2-5, 2-2-7 and 13-1-981 of the Austin

