

**City of Houston, Texas, Ordinance No. 2008-\_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 45 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO HIGH DENSITY DEVELOPMENT ON LOCAL AND COLLECTOR STREETS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, the City of Houston is a municipal corporation organized under the Home Rule Amendment to the Texas Constitution and general and special laws of the State of Texas and exercises the powers granted by such laws as well as those set forth in the City's Charter; and

**WHEREAS**, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

**WHEREAS**, certain types of high-density development, whether new development or redevelopment, particularly within areas previously developed in the City, may have a significant adverse traffic impact on the established and nearby areas of the City affected by such development by:

- (1) Increasing traffic congestion, hazardous traffic conditions, travel time and vehicle conflicts on City streets;
- (2) Increasing vehicle/pedestrian conflicts resulting in injury or death to pedestrians; and
- (3) Impeding the ability of police, fire, ambulance and disaster response services to respond effectively to emergency or disaster situations; and

**WHEREAS**, the City Council finds that it is necessary and appropriate for a person or entity proposing a high density development abutting a local or collector street within the City to analyze the impacts of the high density development on traffic on the adjacent public street system; and

**WHEREAS**, the City Council finds that it is necessary to adopt rules regulating access from certain developments to public rights-of-way within the City to:

- (1) Reduce traffic congestion and hazardous traffic conditions;
- (2) Avoid or minimize conflicts between traffic entering and leaving a development and through traffic;
- (3) Preserve and protect the efficiency and carrying capacity of the public street system;
- (4) Preserve and protect street safety for both vehicles and pedestrians;

- (5) Create opportunities for and remove obstacles to economic development by maximizing the efficiency of the public streets of the city; and
- (6) Preserve and protect the ability of police, fire, ambulance, and disaster response services to respond effectively to emergency or disaster situations; and

**WHEREAS**, the City Council finds that the regulations proposed in this ordinance do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, or building size; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** That Chapter 45 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article VII that reads as follows:

**"ARTICLE VII. PERFORMANCE STANDARDS FOR CERTAIN HIGH DENSITY DEVELOPMENTS.**

**Sec. 45-161. Purpose.**

There is a need to establish additional development requirements applicable to certain types of high density developments, due to (i) the impact of these developments on traffic safety, traffic movement and general mobility and (ii) other negative impacts of high density development affecting traffic in the area and, in particular, the effect of these developments on surrounding low-density single family residential neighborhoods.

**Sec. 45-162. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use means a use that is contained in, but is subordinate in area, extent and purpose to the use of, a development for residential purposes and that primarily serves the comfort and convenience of the residents rather than the general public.

*Applicant* means the owner of any proposed high density development subject to this article or a person with a right to purchase or a contingent right to purchase the property associated with the proposed high density development and includes any person representing such owner or person in connection with any plat, permit, permission, approval or other matter required from the city in connection with construction of such high density development.

*Collector street* means a public street that is designated as a major collector on the latest edition of the major thoroughfare and freeway plan adopted by the city council.

*Congested intersection* means an intersection with a level of service of E or F under existing conditions.

*Congested street* means any local or collector street segment ~~on which the average daily~~designated by the director upon determining that the peak hourly traffic exceeds 90 percent of its ~~functional roadway peak hour street capacity as determined by the director under existing conditions~~. Unless designated as such by the director, a street segment shall not be classified as "~~congested~~."congested.' A street segment is measured between its intersections with a major thoroughfare or other street with a signalized intersection, or for a distance of one mile from the perimeter of the development if it does not intersect with a signalized intersection. When a street terminates without an intersection, the terminus shall constitute an intersection for purposes of determining a street segment.

*Design manual* shall mean the Department of Public Works and Engineering Infrastructure Design Manual for Wastewater Collection Systems, Water Lines, Storm Drainage, Traffic Access Standards and Street Paving, as it may be amended from time to time.

*Development* means any activity within the city that requires a development plat pursuant to chapter 42 of this ~~code~~Code and any activity in the central business district that would require a development plat if it were not exempt pursuant to item (1) of section 42-22 of this Code.

*Development plat* has the meaning ascribed in section 42-1 of this Code.

*Dwelling unit* means a structure, or a portion of a structure, that has independent living facilities including provisions for nontransient sleeping, cooking, and sanitation.

*Floor area ratio* means the ratio derived by dividing the total gross floor area of structures within the development by the total surface area of the tract on which the development is located.

*High density development* means a development that meets either of the following criteria:

- a. A 100 percent residential development that ~~exceeds (including any accessory uses) that:~~ (i) has a density of 70 dwelling units per acre; or
- b. ~~Any other development (ii) that exceeds~~ results in a floor area ratio of 3.100 percent or more net increase in dwelling units, whichever is greater; or
- b. Any other development with a net increase in floor area ratio that exceeds 3.

*Level of service* or *LOS* means the standard used to evaluate traffic operating conditions of the transportation system. The LOS is a qualitative assessment of the quantitative effect of factors such as speed, volume of traffic, geometric features, traffic interpretations, delays and freedom to maneuver. Operating conditions are categorized as LOS A through LOS F, with LOS A generally representing the most favorable driving conditions and LOS F representing the least favorable. For the purpose of this article, LOS A through LOS F shall be as indicated in the following chart taken from the Highway Capacity Manual:

Level of Service	Signalized intersection standards (Average control delay per vehicle in seconds)	Unsignalized approach intersection standards by critical approach (Average delay per vehicle on the worst movement in seconds)
LOS A	10 seconds or less	10 seconds or less

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LOS B	Greater than 10 seconds but no more than 20 seconds	Greater than 10 seconds but no more than 15 seconds
LOS C	Greater than 20 seconds but no more than 35 seconds	Greater than 15 seconds but no more than 25 seconds
LOS D	Greater than 35 seconds but no more than 55 seconds	Greater than 25 seconds but no more than 35 seconds
LOS E	Greater than 55 seconds but no more than 80 seconds	Greater than 35 seconds but no more than 50 seconds
LOS F	Greater than 80 seconds	Greater than 50 seconds

*Local street* means any street that is not a major thoroughfare or a collector street.

*Major thoroughfare* means a public street designated as a principal thoroughfare or thoroughfare on the latest edition of the major thoroughfare and freeway plan adopted by the city council.

*Peak hour trips* means the total peak one hour of traffic volume which occurs during the morning (7:00 o'clock – 9:00 o'clock AM) and afternoon/evening (4:00 o'clock – 6:00 o'clock PM) on a weekday.

*Residential test area* means the area determined by creating a closed curve with a radius of ~~4000~~500 feet from the perimeters of the proposed high density development, exclusive of any public street right-of-way and the tract on which the proposed high density development is located. Any tract on which is located a school, a place of religious assembly, or a public park shall be considered single family residential.

*Residential* means pertaining to the use or proposed use of land for premises that contain habitable rooms for nontransient occupancy and that are designed primarily for living, sleeping, cooking and eating therein. ~~A premises that is designed primarily for living, sleeping, cooking and eating therein will be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes.~~ Hotels, suites hotels, motels, boarding houses and day care centers shall not be considered to be residential.

*Residential restrictions* means one or more restrictive covenants limiting the use of property to residential purposes that are contained or incorporated by reference in a properly recorded map, plat, replat, declaration, deed, judgment or other instrument filed in the county real property records, map records or deed records.

*School* means any building or structure where persons regularly assemble for the purpose of instruction or education and includes all playgrounds, dormitories, stadia or grounds used in connection therewith. The term is limited to (1) public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through 12 classes are taught, (2) special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through 12, and (3) public and private institutions of higher education.

*Single family residential* means the use of a tract with one building designed for and containing not more than two separate units with facilities for living, sleeping, cooking and eating therein. A tract upon which is located a free-standing building containing one dwelling unit and a detached secondary dwelling unit of not more than 900 square feet also shall be considered single family residential. A building that contains one dwelling unit on one tract that is connected by a party wall to another building containing one dwelling unit on an adjacent tract shall be single family residential. A tract shall be deemed to be single family residential if it:

- a. Is included within a recorded subdivision subject to any enforceable, valid and unexpired single family residential restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable residential restrictions; or
- b. Includes any portion of an unrestricted lot or tract upon which a single family residential structure exists unless the structure is actually occupied and used exclusively for nonresidential purposes.

*Single family residential area* means a residential test area in which 60 percent of the land area is single family residential.

*Transit corridor street* means a street upon which the track, guideways or stations of a fixed route public transportation system are located. Transit corridor streets also include those streets that the Metropolitan Transit Authority of Harris County, Texas, has designated as the alignment for a fixed route public transportation system. The term does not include the route or stations of a conventional public bus system.

*Transit station* means any facility on, or proposed to be on, a transit corridor street that allows boarding access for a fixed route public transportation system.

**Sec. 45-163. Application.**

(a) This article shall ~~be applicable~~apply to any proposed high density development that:

- (1) Abuts any local or collector street;
- (2) Is located within a single family residential area; and
- (3) Is not located within 1400 feet of a transit station.

(b) It is the express intent of the city council in adopting this article that the impact of traffic in single family residential areas be evaluated as provided herein and to avoid any scheme or artifice in which the ownership of land is manipulated to circumvent the requirements of this article. The director is authorized to require a mobility analysis as a condition of approval of a building permit or issuance of a certificate of occupancy for any development that he determines has attempted to avoid the applicability of this article, taking into account the time of conveyance, the nature of the interest conveyed, the amount of land conveyed and such other information that may be relevant to an individual development.

(c) It shall be the responsibility of the applicant to demonstrate to the satisfaction of the director the basis on which the determinations of a net change in dwelling units, floor area ratio and peak hour trips are made.

**Sec. 45-164. Standards and requirements.**

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(a) *Mobility analysis required for certain high density developments.* A mobility analysis shall be required for a high density development to which this article applies that:

(1) Is projected to produce a net increase of 100 or more peak hour trips; or

—(2) Abuts a congested street and is projected to produce a net increase of 50 or more peak hour trips.

(b) *Calculation of peak hour trips.* Peak hour trips shall be calculated by utilizing the city's on-line peak hour trip generation calculator maintained on the department's website or in accordance with the most recent edition of the Institute of ~~Traffic~~Transportation Engineers' Trip Generation Manual.

(c) ~~*Requesting reclassification*~~*Classification of congested street; requesting reclassification.* The director shall promulgate a list of congested street segments not more than once every year. A street segment that is not included on the annual list is not a 'congested street' for purposes of this article. Any applicant may request the director to reclassify any street that is classified as a congested street. A reclassification request shall be in the form prescribed by the director and shall include at a minimum traffic data collected within the subject street segment during a 24-hour period with normal traffic conditions. If the applicant demonstrates to the director that the street no longer is a congested street, or was incorrectly classified as a congested street, the director is authorized to reclassify the street. In reclassifying a congested street, the burden shall be on the applicant to demonstrate that the street is not congested and the director shall determine whether to reclassify the congested street in the sole exercise of his professional judgment.

(d) *Mobility analysis study area.* Each mobility analysis shall include within its study area the following:

- (1) All site access driveways;
- (2) All signalized and non-signalized intersections abutting the development;
- (3) The first non-abutting controlled intersection on each street that abuts the development; and

- (4) The first intersection of each street that abuts the development with a collector street or major thoroughfare, unless the first intersection is more than one-half mile from the perimeter of the development along the abutting street, in which case the intersection is not included in the study area.

~~(d) *Notice of exemption.* Any person who asserts that a proposed development is not subject to the requirements of this article shall submit a notice of exemption, in the form prescribed by the director, with the development plat or building permit application for the project. The notice shall include at a minimum the peak hour trip generation as determined in accordance with subsection (b) of this section, location maps, maps and land use information describing the residential test area, and a description of the project, all of which must be sufficient for the director to determine whether the development is subject to the requirements of this article. The director shall notify the person in writing if he determines that the development is not exempt from the requirements of this article. The filing of a notice of exemption is a condition for the approval of a development plat and building permit. Any city permit approved for a development that is subject to the requirements of this article shall be void if the development does not comply with the requirements of this article.~~

**Sec. 45-165. Performance standards.**

(a). Approval by the director of the mobility analysis of any high density development required to submit an analysis pursuant to this article is a condition to the issuance of a building permit, the approval of a development plat or the granting of any access from the site of the proposed high density development to any public right-of-way, including but not limited to the making of curb cuts or other action preliminary or necessary to such access and whether by permit or otherwise,

(b) The director shall approve a mobility analysis if he determines that the high density development will meet each of the following criteria:

- (1) The traffic generated by the development will not reduce the LOS of any uncongested intersection within the study areas to below LOS D; and
- (2) The traffic generated by the development will not increase by more than 10 percent above background conditions the average delay at any signalized congested intersection

within the study area or the delay of any LOS E or F approach at any unsignalized intersection within the study area.

If the director determines that the mobility analysis does not demonstrate that the development meets these criteria, he may approve the mobility analysis only if he determines that all reasonable mitigation measures, including reducing the scale of the development, have been identified, and when implemented, the congestion levels will remain higher than established by this subsection but safety will be improved and congestion and vehicle conflicts will be avoided as much as possible. Otherwise, the director shall disapprove the mobility analysis. The director's approval or disapproval shall be in writing and be provided to the applicant within 30 days of decision. No development plat shall be approved, nor any building permit issued, without an approval letter issued by the director.

(c) Where the approved mobility analysis includes mitigation measures, no development plat shall be approved, or any building permit issued, relating to the proposed development unless each mitigation measure is reflected on the plat or the permit. If any mitigation measure relates to a matter that would normally be completed during or after construction, no certificate of occupancy or final inspection shall be issued for the proposed development until the condition is fully satisfied or provision made for its satisfaction.

**Sec. 45-166. Appeal.**

The applicant shall have 30 days from the date of the director's disapproval of the mobility analysis to file a written appeal to the planning commission of the director's determination that the proposed development does not meet the standards for approval. The planning commission shall, in considering the appeal, base its decision on the criteria set forth in section 45-165 of this Code. If dissatisfied with the decision of the planning commission, the applicant may appeal to the city council pursuant to rule 12 of the city council rules of procedure (section 2-2 of this Code). The decision of the city council shall be final with respect to the determination whether the proposed development meets the standards of approval of this section. The prosecution of any appeal of the city council's decision to a court of competent or appropriate jurisdiction shall be on the basis of the substantial evidence rule. Unless the planning commission or city council determines as a result of the appeal provided in this section that the proposed development meets the standards of approval of this section, the decision of the director to

disapprove a mobility analysis shall be final and may not be altered in an appeal.

**Sec. 45-166. Cumulative effects.**

The provisions of this article are cumulative of all other requirements of this Code and other laws and regulations of the city, including, without limitation, the Construction Code, the Fire Code and the design manual, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law, and applicants and owners of developments that are not required to prepare a mobility analysis pursuant to this article are additionally required to obtain any other permits, licenses, and authorizations required by law, including, without limitation, grants of access to public streets."

**Section 3.** The provisions enacted by this Ordinance shall not be effective as to any proposed development for which a structural permit has been issued by the Building Official as of the effective date of this Ordinance.

**Section 4.** That the Director of the Department of Public Works & Engineering is hereby required to evaluate the effectiveness of the provisions adopted by this Ordinance in addressing the concerns set out in the preamble of this Ordinance and to report the results of the evaluation to the Mayor and the City Council not later than February 1, 2009, with recommendations as to any modifications or repeal.

**Section 5.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained

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herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

**PASSED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 2008.**

\_\_\_\_\_  
Mayor of the City of Houston

Prepared by Legal Dept. \_\_\_\_\_  
DFM:dfm 1/09/08 Senior Assistant City Attorney  
Requested by Mayor Bill White  
L.D. File No.

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