



PLANNING AND DEVELOPMENT SERVICES
PUBLIC SERVICES

TO: Honorable Mayor and City Council

FROM: Shannon Mattingly, Director, Planning & Development Services
Tom Taggart, Director, Public Services

DATE: October 13, 2020

RE: **POTENTIAL DEVELOPMENT CODE AND CITY CODE AMENDMENTS TO ADDRESS CONCERNS WITH DEVELOPERS REQUESTING TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) IN LIEU OF CONNECTING TO CITY OF SAN MARCOS UTILITY INFRASTRUCTURE.**

Recently, a number of developers of property in the San Marcos extraterritorial jurisdiction (ETJ) have stated that they are seeking TCEQ approval of package wastewater treatment plants in lieu of connecting to City services to avoid compliance with the requirements of the City's Development Code. During its September 1, 2020 Executive Session, Council received legal advice from the City Attorney regarding the City's requirements for connection or extension of utilities to property located outside the city limits of San Marcos which entail annexation, zoning and the application of land development code requirements.

At this time, staff is providing a history of how we got to where we are today and is seeking direction from City Council on which amendments, if any, they would like staff to analyze and process to address concerns raised by developers with the current process and rules.

The staff presentation will consist of the following topics:

- PROPOSED DEVELOPMENTS WITH ACTIVE TPDES APPLICATIONS
- CITY OPPOSITION TO TPDES APPLICATIONS
- POTENTIAL CONNECTIONS AND ESTIMATED REVENUE
- RELEVANT CODE SECTIONS
- PROCESS AND POTENTIAL SOLUTIONS
- CITY COUNCIL DIRECTION REQUESTED

PROPOSED DEVELOPMENTS WITH ACTIVE TPDES APPLICATIONS

The following is a list of proposed developments, which can be found on the attached map, with active TPDES applications for package wastewater treatment plant permits submitted to the TCEQ. This list includes a status of the development process to date.

- Independence Trail
 - Concept Plat in review.
 - Development Agreement offered.

- The Mayan (River Bridge Ranch)*
 - 2008 Annexed into City Limits.
 - September 1, 2020 – The developer, in coordination with the Riverbend Ranch/Riley's Point developer, submitted a petition to create a Public Improvement District (PID) to finance the infrastructure
 - September 15, 2020 - Zoning approved by City Council.
 - October 7, 2020 - The developer submitted a new petition to create a PID only for the Mayan property, to finance the infrastructure.
 - Settlement Agreement and PID to be considered for approval by City Council at an upcoming meeting.

- Riverbend Ranch / Riley's Point*
 - Draft Development Agreement awaiting a response from the developer on how they wish to proceed with future annexation and zoning.
 - April 28, 2020 – Planning & Zoning Commission recommended approval of a Preferred Scenario Amendment (put on hold by developer).
 - Developer withdrew their participation in the PID with the Mayan prior to October 7, 2020 City Council meeting.

- Fleming Farms
 - Preliminary Plat & Watershed Protection Plan (WPP) in review.
 - Development Agreement offered.

- Jackovich (El Cerrito Ranch)
 - 2017 – Plat, Watershed Protection Plan (WPP), & Public Improvement Construction Plans (PICP) approved for one acre lots with septic systems. In 2020, an application was filed with TCEQ.

*Note: The Mayan, Riverbend Ranch, and Riley's Point have submitted only one TPDES application for proposed service of the three areas. The Mayan will not be party to this application following approval of the settlement agreement.

The TPDES applications are submitted by the Crystal Clear Special Utility District (Crystal Clear SUD) as the ultimate provider of wastewater service. Crystal Clear SUD currently provides wastewater service to only one subdivision, with a small package plant, on Hunter Road.

CITY OPPOSITION TO TPDES APPLICATIONS

The City has protested issuance of TPDES permits in accordance with Section 70.052(a)(10) of the City's Code of Ordinances which states: "The city discourages the use of sewer package treatment plants." The protests are for the following additional and related reasons:

- Protection of our environment and rivers.
- Support of State legislative direction for regionalization of wastewater services.
- Impacts on quality of life in subdivisions served and neighboring properties. (odors, discharge flows)
- Loss of City utility and general fund revenues and prevention of customer rate base growth.
- Loss of centralized reuse of the wastewater processed at the package plants potentially limiting future reuse system expansion.
- Potential failures at unstaffed package plants could create health threats.
- Certificate of Convenience and Necessity (CCN) coverage of our ETJ which would limit expansion of our utility systems into our preferred growth areas East of I-35.
- Stranding invested City money in system capacities already installed.
- Establishing a precedent for all ETJ developers.

The TCEQ process is advancing toward permit issuance with draft permits proposed by the Executive Director. The following is a status of the applications in process:

- Independence Trail
 - City has been granted standing and the State Office of Administrative Hearings (SOAH) has scheduled a hearing for December 18-23, 2020.
- The Mayan / Riverbend Ranch / Riley's Point*
 - Seeking resolution through the approval of the Mayan settlement agreement. TCEQ has held a public meeting at the request of Rep. Zwiener for the HK properties permit application and a draft permit issued, now pending response and SOAH hearings.
 - The Mayan will not be party to this application following approval of the settlement agreement.
- Fleming Farms
 - TCEQ hearing to determine standing status, and if SOAH should hear the protest, is scheduled for October 7, 2020.
 - City is working to secure pipeline easement options which could aid connection if the developer drops pursuit of a package plant.
- Jackovich (El Cerrito Ranch)
 - TCEQ plant application filed and under technical review by TCEQ.

POTENTIAL CONNECTIONS AND ESTIMATED REVENUE

The following table and calculation indicate the number of anticipated connections per development and the estimated utility revenue that could be realized by the City based on the average monthly residential usage of 5,500 gallons. Riley's Point is the only development that would connect to both city water and wastewater, if they were restored to our CCN.

Existing Connections	Water	Wastewater
Existing	13,188	11,417
Potential Connections	Water	Wastewater
Riley's Point	1,680	1,680
Mayan		1,100
River Bend Ranch		2,070
Fleming Farms		329
Independence Trail		400
Total	1,680	5,579

The financial benefits of adding these developments are very significant, nearing \$6 million annually. If standalone systems are the new pattern of growth in the ETJ, it will be a much higher revenue amount lost annually.

Annual Additional Revenue:

Water	\$1,238,760
Wastewater	\$4,545,612
Total	\$5,784,372

The City charges an 8% franchise fee on utility revenue credited to the General Fund = \$462,750

RELEVANT CODE SECTIONS

Chapter 86 of the City's Code of Ordinances allows extensions and connections of City utilities to property located within the ETJ. However, in exchange for the benefit of connecting to City utilities, the City's ordinances require that developers making such a request consent to annexation of the property being served. Developers have expressed opposition to being annexed due to the increased costs associated with development standards in the San Marcos Development Code, including standards for blocks, lots, and access; alley requirements, garage placement, parking location; and porches. Consequently, developers have indicated their preference for package plants over being annexed.

The following pages summarize the Code Sections in question.

Chapter 86 Utilities – Out of City Utility (OCU) Requests

[Section 86.003](#) of the City Code of Ordinances provides standards for extensions and connections to city water or wastewater outside of the city limits. At this time, the Code states that requests must be accompanied by a written request for annexation of the applicant’s property, and for those properties not adjacent to our city limits, a strip that is 15 feet in width is required to create contiguity.

In previous years, staff would hold on to the annexation consent forms until the annexation plan was updated and annex these areas in bulk. With the change in the annexation laws, this practice is not as feasible. Staff now recommends that developments be annexed and zoned at the beginning of the development process or that annexation be deferred to the time of platting through a negotiated development agreement.

San Marcos Development Code Alley Requirement

Alley requirements and Garage requirements work together to move vehicular access to the rear of lots. This allows the streetscape to favor the pedestrian by reducing the number of driveways crossing the sidewalk and allows homes to be closer to the street with front windows that encourage interaction and puts more ‘eyes on the street’ in residential areas. When a developer does not want to meet one of these requirements, they likely need a waiver to both.

[Section 3.64.2.D.2](#). All lots forty (40) feet or less in width platted after the effective date of this Development Code are required to take vehicular access from an alley. The Responsible Official may waive this requirement for minor subdivisions platted under Section 3.2.4.1.

- This provision applies in all zoning districts, except that SF districts do not allow lots smaller than 50 feet in width.
- Minor Subdivisions are four (4) lots or less that meet certain requirements.

[Section 4.4.3.3](#) & [Section 4.4.3.4](#) All lots 45 feet or less in width shall take vehicular access from a rear alley except Cottage Courts / Courtyard Housing.

- This provision applies only to CD-3 and CD-4 Zoning Districts.

Relief Procedure: If a developer does not wish to comply with the alley requirement they may seek an Alternative Compliance from the Planning and Zoning Commission.

- To date we have not received any alternative compliance requests for this standard.
- The following ETJ developments have indicated that they do not wish to comply with this standard: Riverbend Ranch, Riley’s Point, Fleming Farms, Independence Trail.

San Marcos Development Code Garage Requirement

The “Residential Garage Parking Requirements” or “Parking Location / Garage” were prepared with many considerations in mind, including Trace Planned Development District (PDD) negotiations regarding ‘snout houses’ and staff heard from Blanco Vista that their alley loaded products were very successful. In addition, the Police Department has indicated concerns with the style of home design where the garage protrusion creates an exterior hallway at the front door. Their concerns are with their inability to approach the door from multiple angles or to retreat, when necessary.

The requirements are applicable to all zoning districts except Conventional Residential (FD, AR, SF-R, SF-6, SF-4.5), and CD-1 & CD-2.

[Section 7.1.4.1.C](#) Where Residential Garage Parking Requirements are applicable, garage placement must match one of the following:

- Semi-Flush – 5 feet behind the front wall plane of the house and not extending more than 40% of the width of the house. Garage door may not exceed 12 feet.
- Recessed – 20 feet behind the front wall plane of the house with no garage door size limit.
- Side-Loaded – 3 feet behind the front wall plane of the house and oriented perpendicular to the street.
- Detached – entirely behind the house.
- Alley Loaded – accessed through an alley with doors facing the alley. If parking is provided outside of the garage, there is a 20 ft. setback from the alley.

San Marcos Development Code Surface Parking Requirement

Similar to Garage Requirements, surface parking is also not permitted in the first layer for all zoning districts except Conventional Residential and CD-1 & CD-2. This means that driveways for single family residential only count as required parking when located behind the front façade of the building.

Relief Procedure: If a developer does not wish to comply with the garage or surface parking requirement, they may seek an Alternative Compliance from the Planning and Zoning Commission.

- To date we have received one request for alternative compliance for the garage requirement (Redwood / Highbranch). The request was denied by the Planning and Zoning Commission and approved on appeal to City Council. The developer negotiated with staff to reach a middle ground that, in summary, does not allow garages to protrude beyond the house or porch, requires the front door be flush with the façade, requires porches on 50% of homes, allows the garage to be 55% of the front of the home, and requires additional architectural treatments.
- The following ETJ developments have indicated that they do not wish to comply with the garage standard: Riverbend Ranch, Riley’s Point, Fleming Farms, Independence Trail.

San Marcos Development Code Porch Requirement

In [Chapter 4, Division 6](#) the Development Code provides a table for Building Elements Allowed for each Building Type. Front Porch, Stoop, and Balcony are the elements allowed for residential building types.

[Section 4.3.5.10](#) the Building Elements Table provides standards for these elements. When a building element is provided, it must be meet the requirements. However, if a building element listed is not provided, the standards would not apply.

- Front Porch – at least 6 ft. deep and 50% of the façade. May be roofed and screened, but not enclosed. May extend up to 9 ft. into the required front setback.
- Stoop – No more than 6 ft. deep and 6 ft. wide. May be covered but not enclosed. May extend into the front setback, but not into the right of way.
- Balcony – 9 ft. clear height above the sidewalk. May be covered but not enclosed. May extend into a setback and encroach up to 2 ft. into the right of way.

Relief Procedure: If a developer does not wish to comply with the building elements requirements, they may elect not to include the specific elements in their building design or they may seek an Alternative Compliance from the Planning and Zoning Commission.

- To date we have not received any alternative compliance requests for this standard.
- The following ETJ developments have indicated that they do not wish to comply with this standard: Fleming Farms.

San Marcos Development Code Block Standards

A design representative of Riverbend Ranch / Riley’s Point reached out to staff in reference to [Section 3.6.2.1.B](#) which does not allow residential lots to back onto anything except other lots or vacant land. Staff has worked with other developments on meeting this standard, however the developer has not shown flexibility in working with staff.

Relief Procedure: If a developer does not wish to comply with the block standards requirement, they may seek an Alternative Compliance from the Planning and Zoning Commission.

- To date we have not received any alternative compliance requests for this standard.

San Marcos Development Code Table 4.1 Comprehensive Plan / District Translation

Many of the standards opposed by developers are limited to the new character districts established by the Development Code in 2018 and not are applicable in conventional residential zoning districts such as SF-6 Single Family District and SF-4.5 Single Family District. Developers may have interest, therefore, in developing under the standards for conventional residential zoning districts. All of the developments at issue are located within Low Intensity Areas on the Preferred Scenario Map. Although these conventional single-family residential zoning districts are low intensity in nature, Table 4.1 may discourage developers from seeking these zoning designations because conventional residential zoning districts are indicated as “NP” or not preferred within Low Intensity Areas on the Preferred Scenario Map. While NP does not mean approval of a conventional residential zoning district is prohibited, such a request requires additional scrutiny as compared to “C” or considered in areas of Low Intensity. Whether “NP” or “C” in Low Intensity on Table 4.1, the timing for consideration of a zoning change request does not change. Either scenario requires one public hearing at Planning and Zoning Commission and one public hearing at City Council, with reconsideration of the zoning ordinance at the following meeting.

PROCESS AND POTENTIAL SOLUTIONS

Current Process:

When a development requires city water or wastewater service, staff provides two options to developers:

- 1) Development Agreements - these agreements are beneficial when developments are not adjacent to city limits, developments are large and will be phased, or where a developer wishes to negotiate standards for the development with a Council Committee.
 - In the past, some of these negotiations have been successful in providing the developer the flexibility they desire, while providing a benefit to the City. Other negotiations have been unsuccessful and have resulted in developers filing permit applications with the TCEQ for package sewer treatment plants. Unfortunately, at this time, developers do not seem inclined to negotiate to provide a benefit to the City and only wish to waive standards and / or receive incentives from the City. See attached "Development Comparison Table."
- 2) Annexation & Zoning – specifically when adjacent to city limits, staff recommends bringing properties into city limits to ensure compliance with city code in exchange for offering services.
 - Developments within city limits have the relief procedures available above if waivers to Code standards are desired.

Potential Solutions:

- Although immediate annexation is not mandated under the current provisions of Chapter 86 of the City Code of Ordinances, amend Chapter 86 to provide the potential for the developer to negotiate a deferral of annexation with the City Council's approval of an OCU request or through a development agreement.
- Amend Table 4.1 to make conventional residential zoning districts preferred in areas of Low Intensity.
- Restore the ability for developers to seek financial incentives, such as Public Improvement Districts (PID), as an incentive to negotiate development agreements providing for annexation at the time of platting, or agree to immediately annex their property into the City if it is contiguous to the existing city limits. The current moratorium resolution for residential incentives expires in November, 2020.
- Amend the San Marcos Development Code, either city-wide or only for ETJ developments, to remove some standards which developers indicate as barriers to successful development.

Any combination of these, or other, solutions can be considered by City Council.

CITY COUNCIL DIRECTION REQUESTED

The decision facing City Council is comparing the relative benefit of the specific relevant Code sections discussed above to the benefits of extension of City utilities. Developers represent that the development standards and requirements for annexation are unacceptable to them and only a waiver of these requirements would prevent package treatment plants from being constructed. There are many reasons that package plants are not desirable, not the least of which is the estimated revenue loss and potential negative environmental impacts.

Staff seeks direction on the potential solutions to the concerns raised in the discussion above and provides the following decision points to the Council for consideration. Staff recommends a combination of the following, in the order provided:

- 1) Amend Chapter 86 of the City Code of Ordinances to make the annexation language more flexible, allowing the developer the potential to negotiate the timing of annexation through the OCU approval or Development Agreement process.
- 2) Amend Table 4.1 to indicate conventional residential zoning districts such as SF-6 and SF-4.5 as “P” or preferred in areas of Low Intensity.
- 3) Restore the ability for developers to seek financial incentives, such as Public Improvement Districts (PID), as an incentive to negotiate development agreements or annex into the City. The current moratorium resolution for residential incentives expires in November, 2020 and will be discussed at an upcoming Council Work Session.

Should Council wish, consideration may be given to amending the City Code of Ordinances or San Marcos Development Code, either city-wide or only for ETJ developments to remove some standards which developers indicate as barriers to successful development.