

Attachment 2

Fair Oaks Ranch UDC Amendments

Summary of changes after the October meeting of P & Z.

UPDATED - 3/31/2023

All redlined versions were shared with the P & Z throughout the UDC amendment process. An effort has been made to capture all the changes made since October 2022 in this document.

1. Page 1 - 1.1 (2) Revised for consistency with “Words and Terms Not Defined” section in Chapter 12 Definitions (see Sec.12.1(2)).
2. Page 3 -1.5(2) Deleted reference and the non-conforming use language as it is in reference to zoning regulation which the City may not regulate in the ETJ.
3. Page 4 – Sec. 1.8 - Consider using this section for the “Development in Progress” language from previous note. See this is a comprehensive change, can be used as new section since violations are covered in chapter 11.
4. Page 5 – Sec. 1.10 – Violations - Referred to Chapter 11.
5. Page 10 – Section 2.3 Authority of P & Z. Made following change - the appeals language refer to current authority on approvals and appeals.
Page 16 - *Reverted to original – Require P & Z and CC Approval.*
There was a revision on page 16 to the summary of review authority chart which is now making development plats administratively approved. There is no support in LGC 212.047. “Approval of Development Plat” for administrative approval.
6. Page 16 - Updated Table 3.1 to be consistent with state statutes.
7. Page 17 – Section 3.3 Simultaneous Submission of Related Applications.
Deleted - Applications that are subject to statutory limits on action time may be returned if applications that are prerequisite(s) are not approved. (As per statutes.)
Due to action timeline required by state law, we do not recommend allowing the concurrent submission of sequenced plat applications. May want to consider the following language: Any application that is subject to a prerequisite will not be accepted for processing until all prerequisites are met.
8. Page 19 - 3.4 Revised language for consistency with subparagraphs a & b.
9. Page 19 -3.4 (4) Determination of Application Completeness. Minor edit for consistency with terminology.
10. Page 19 -Vested rights - Revised for consistency with LGC chapter 245.
11. Page 21 – Clarified the date of adoption of subdivision regulations.
12. Page 23 - Section 3.6 Notification – Alternate notification.
A UDC text amendment may also require mailed notice depending on what is being changed. See court case City of Austin v. Acuna, No. 14-20-00356-CV, 2022 WL 805953 (Tex. App. Mar. 17, 2022).
The chart indicates “UDC Text Amendment” – depending on the type of amendment mailed notice may be required.
If the “text amendment” is actually a zoning regulation or zoning boundary then individual notice is required. The alternative form of notice is applicable to a joint meeting before council and P&Z for a zoning item.
Recommend the line for zoning change remain the same and place a footnote/reference on the UDC Text Amendment to indicate refer to zoning change if applicable.
13. Page 27 – Clarified pre-application conference requirement.

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14. Page 29 – Responsibility for final action. Added language regarding City Council’s authority.
15. Page 29 – Recommend removing the reference to “(who are also resident inside city limits)” in Subsection 4.b.vii. since the requirement is property owner rather than resident.
16. Page 31 – Zoning variances – clarification.
For further clarification, recommend removing the first sentence of the statement in C.iii on page 30, related to zoning variances.
17. Page 31 – Rezoning - Inserted language as Sec.3.4.1.b requires a pre-application conference.
18. Page 31 - Zoning Map Amendment – Rezoning
Revised to include the 20% of property owners being rezoned, since the city council can initiate rezoning.
Clarified - streets and alleys being included in the calculation for consistency with state law.
19. Page 33 -HOA. Revised for consistency with discussion about enforcement of HOA/deed restrictions.
Minor revision - removed the “and” from the end of item 6.
20. Page 37 – Minimum requirements.
21. Page 37 – Non-substantial amendments. Updated based on the legal comment.
Recommend adding as the first statement in subsection h “All other amendments not deemed substantial shall be considered nonsubstantial amendments.”
22. Pages 38 - 39- Platting requirement for sale, conveyance etc. Updated based on the legal comment.
Existing Language - Except for agricultural leases, no land described in this section will be platted or sold, leased, transferred, or developed until the property owner has obtained approval of the applicable Concept Plan, Preliminary Plat, Final Plat or Development Plat from the City Council or the City Manager as required by these regulations.
What can be permitted without a plat. Moved d. under a. Define building permit.
Confirmed - the City may not control the conveyance of property. This statement should be revised to:
No land described in this section may be subdivided or developed until the property owner has obtained approval of the applicable Concept Plan, Plat, or Development Plat from the City Council or the City Manager as required by these regulations.
23. Page 39 – Shot clock provisions. Updated based on the legal comment.
Below is simplified language for conditional approval that may want to consider capture/simplifying the statutory language.
Conditional approval and denial. If the City Council conditionally approves or denies the plat, a written statement must be provided to the applicant clearly articulating each specific condition for the conditional approval or reason for denial. Each condition or reason specified in the written statement may not be arbitrary and must include a citation to the regulation, ordinance, or law that is the basis for the conditional approval or denial.
Applicant response to conditional approval or denial. After the conditional approval or denial of a plat, the applicant may submit a written response that satisfies each condition for the conditional approval or remedies each reason for denial provided. The City Manager is authorized to approve revisions required for conditional approval of the plat. The City Council shall determine whether to approve or deny the applicant's previously denied plat or conditionally approved, if forwarded to the City Council by the

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City Manager. Action shall be taken by the City Manager or City Council no later than the fifteenth (15th) calendar day after the date the response was submitted.

24. Page 42 – Deleted section as per the following legal comment- “Recommend not allowing for a discretionary allowance by the City manager to require a concept plan. If discretion is needed; recommend developing criteria when plan required and what would qualify for wavier of requirement. Additionally, what if someone wants to by-pass this step and go directly to preliminary platting the entire parcel?”
25. Page 42 – Concept Plan – shot clock – added “certification of plat exhibits” process.
26. Page 44 – Removed plat waivers section and moved to page 48.
27. Page 46 – Modified Replat section (approval criteria, notification, certification of exhibits, recordation etc.)
28. Page 48 – Added reference section for temporary use examples.
29. Page 51 – Minor clarification of Special Exception applicability.
30. Page 52 – Removed ETJ reference.
31. Page 53 – Updated to ensure compliance with LGC 211.010(d)).
32. Page 55 – Modified hardship language based on the following legal recommendation.

The following language can be incorporated to for the additional criteria for finding a hardship as applied to a structure:

 - a. Finding of undue hardship as applied to a structure. In considering a judicial variance as applied to a structure, the Zoning Board of Adjustment may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the UDC:
 - i. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under V.T.C.A., Tax Code, § 26.01,;
 - ii. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
 - iii. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - iv. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - v. The city considers the structure to be a nonconforming structure.
33. Page 59 - Newly Annexed Territory - Amended to include a language that the temporary zoning applies unless permanent zoning is requested with the annexation.
34. Page 62 - Residential Districts – Added language to clarify that the City will not force deed restrictions. Clarified to refer to deed restrictions for setback requirements.
35. Page 94 - Table 5.1 and 5.2 - Clarified to refer to deed restrictions for impervious cover requirements.
36. Pages 98- 136 (Chapter 6) - Revised all references be revised to "should" or "may" to avoid any claims of violation of TGC Chapter 3000.
37. Page 124 - Materials -Removed the requirement for approval since these are recommendations.
38. Page 124 - Facade Transparency - All language changed to should and may to avoid a legal challenge.
39. Page 135/136 (chapter 7)– Recommendations.

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The revisions to Sec.7.2.2 Applicability: Updated based on the following legal comment. Still seems ambiguous - recommend adding a definitive statement of when required to avoid a legal challenge:

All developments approved under Conservation Development Alternative shall be required to adhere to Low Impact Development (LID) standards. It is recommended that other developments the City of Fair Oaks Ranch follow the general recommendations set forth in this Section.

40. Page 152 - Revised to require approval or a statement that damaged trees will be treated as required in LGC 212.905, as amended.
41. Page 155 - Denial of Tree Plan - Removed the language that an appeal to a tree plan would allow for the postponement of processing a plat request against the 30-day shot clock.
42. Page 158 - Acceptance of improvements. Removed conflicting provisions. Added reference to chapter 11.
43. Page 159 - Parking - Ensured that parking and use of improved parking surface public parking is addressed.
44. Page 160 - Fiscal Surety and Assurance of Construction and Maintenance – Clarified the language to that the plat will not be recorded unless the Developer has complied with all the requirements for Fiscal Surety.
45. Page 180 – Restrictive Covenant. Updated based on the following legal comment.
The restrictive covenants as listed would require that the City bring a lawsuit against any property owner that failed to comply.
 - a. If sewer system will be extended in the near future, then City may want to make it a requirement that the City taps be installed at time of construction in addition to constructing the OSSF.
 - b. Recommend deleting all references to County regulations unless the City intends to enter into an interlocal agreement for the City to enforce on behalf of the county. In practice this means expending city funds to enforce county regulations.
 - c. Added the county On Site Permit must be presented before installing new or replacement Septic Systems. Section 8.6 (4) f
46. Page 182 – Transferable Water Rights. Updated based on the following legal comment.
This section is likely unenforceable. If the development is within the City's CCN the City is required to provide water. If it cannot, then the developer needs to reconsider. Developer may voluntarily provide a water source to the City to use in the public system but mandating would likely be considered "a taking" – a form of condemnation that requires the City pay the value to the of the water rights to the owner.
Done, changed to "may".
47. Page 220 - Removed language to show conformance to LGC Chapter 3000.
48. Pages 228 – 229 - Removed private restrictions and higher standards subsections to avoid repetitions.
Individual Complaint to City Regarding Violations - Removed as there is reason to codify the complaint process as investigating a complaint is an internal process.
49. Page 230 – modified the right of entry language.
50. Page 230 – Suspension and revocation. Updated based on the following legal comment.

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A variance cannot be revoked by a suspension or revocation. There is case law that allows an SUP to be revoked but in the cases reviewed the SUP was more in line with a Conditional Use Permit. Recommend revising the section to allow for case-by-case review based on facts/circumstances as noted in item below. This will take the guess work out of the provision.

Failure to Comply. When it is determined that there is a failure to comply with any term, condition, or requirement that was a condition of the approval of a variance or special use permit, the City Council may direct the City Manager, City Attorney, or another agent or official to take any enforcement authorized by the UDC or state law.

51. Page 232 – Assessment & Land Use & Zoning. Updated based on the following legal comment. Recommend striking the assessment language. A lien to secure infrastructure for new development would likely be considered a tax and may not be imposed in this manner. City needs to secure other forms of security for developer infrastructure requirement.

52. Page 233 – Removed Notification subsection.

53. Page 234 – Deferring installation of public infrastructure. Updated based on the following legal comment.

If the City would like more discretion on when a project may bond infrastructure and record the plat before construction the infrastructure, consider the following language revision:

Construction of Improvement After Recording Final Plat. The Developer may request to defer the obligation to construct and install one or more public improvements to serve the associated subdivision until after Final Plat recordation. The request shall be submitted in writing and specify what is being requested for deferral. The City Manager or his/her designee, at their discretion, may approve or deny the request to defer installation of public infrastructure improvements. Deferral of the obligation to install public improvements if granted shall be conditioned on the Developer entering into subdivision improvement agreement with the City and posting fiscal surety to assure completion of all construction required under this Code. The following shall be submitted by the Developer and incorporated into the subdivision improvement agreement:

54. Page 235 - Updated based on the following legal comment. Funds to be assigned to a third party for completion of the project; sale of lots.

Per the previous round of comments, the City may not control the right to sale property via ordinance. The "Sale of Lots" provision should be revised to:

Development of Lots. No building permits shall be issued by the City until all utilities are installed and all other improvements required by this Code are made within the block in which said lot is contained. No building permit shall be issued unless all public improvements are completed to serve the lot.

Others:

1. P & Z comment

Recommend - "the county On Site Permit must be presented before installing new or replacement Septic Systems".

Done. Added -Section 8.6 (4) f.

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2. Signage – Discuss all changes.

Discuss overall legal assessment on sign section. Original recommendations to remove content-based regulations are still recommended as it subject the City to potential legal liabilities.

The following recommended changes are being finalized.

- Rewrite definitions to remove reference to content, because of state law.
- Classify signs into the following categories, based on type and location:
 - Temporary signs
 - Signs in residential districts (use), include neighborhood signs and FORHA signs.
 - Signs in non-residential districts (use)
- Regulate Community Signs by zoning districts.
- List all exempt and prohibited in one section.
- Eliminate permits for temporary signs, e.g. Garage Sale signs etc.
- Combine all types of banners. Remove requirements from the ordinance. Refer to the City policy.
- Political signs – Remove requirements from the ordinance. Refer to the City policy/compliance with state law.
- Regulate vehicular signs by type.

The comments received after P & Z Meeting of 2-9-23 and responses (in red text) have been described below:

1. The footers starting 4.2 (3) are labeled Chapter 5
Addressed
2. Section 4.6 (2) Commercial / Mixed Use / Nonresidential Districts
 - a. Mixed Use Village (MU); original wording
Purpose: The Mixed Use Village District (MU) indicates areas within the City of Fair Oaks Ranch where the City allows and encourages a mixture of uses.... Development standards in this district will require new buildings to generally conform to a Hill Country Design aesthetic.... Can we add a definition of the term “Hill Country Design aesthetic” to chapter 12?
Addressed. Already defined under Texas Hill Country Character. Added reference to the Texas Hill Country Character that is defined in Chapter 12 Definitions.

“...Development standards in this district will require new buildings to create pedestrian friendly building frontages and generally conform to a Hill Country Design aesthetic (defined under Texas Hill Country Character in Chapter 12) . Uses within this Zoning District...”

3. Good to see that parking in commercial districts is in back of the buildings. No change required.
4. Table 4.2 - What is the status of gas stations?
Stand alone gas stations were already there. Not permitted as stand alone, as per P & Z’s directive.

Gas Stations (Stand alone, single use buildings)								1 space per 200 sf of usable building area
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5. Good definition of light manufacturing.
No change required.

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6. 4.11 (3) Removed reference to Model Homes. Model Homes renewal not addressed in 3.9. Amended. Added the requirement of City's approval for renewal.

Section 4.11 Temporary Uses

- (3) Construction Oversight Offices
A temporary building for use as a construction oversight office is permitted on a twelve-(12) month or shorter basis unless a renewal is approved by the City. One construction oversight temporary building shall be allowed for each builder in a subdivision in which that builder has the authority to construct structures.
7. The footers starting 4.2 (3) are labeled Chapter 5.
Addressed. This was part of formatting that needed to be changed after all comments were incorporated.
8. Section 5.4 (2) Impervious Cover a. Maximum Impervious Cover 4.
Current wording "Put another way: Net Site Area = Gross Site Area – (100-year floodplains +100% at 15% slope or greater outside of floodplain +50% of land area with 15%-25% slopes outside of floodplain)"
Should read: "Put another way: Net Site Area = Gross Site Area – (100-year floodplains +100% **less than 15% slope** outside of floodplain +50% of land area with 15%-25% slopes outside of floodplain)"
Should also add that no building is allowed on slopes greater than 25%.
Addressed as follows:

"Put another way: Net Site Area = Gross Site Area – (100-year floodplains +100% of land at 15% slope or greater outside of floodplain +50% of land area with 15%-25% slopes outside of floodplain). No building is allowed on slopes greater than 25%."
9. Starting with 6.9, the images, drawings, tables, pictures, and many cross-references still have the Chapter 7 numbering.
Addressed
10. Reverse the replacement of "will" and "Shall" with "should" in sections 6.4, 6.5, 6.6, 6.7, 6.8, 6.9.
Addressed
11. Reverse the term "are recommended for" in 6.9.(4) and "it is recommended" in 6.9 (7)
Addressed
12. The 7.2. (3) Design Criteria Discusses Best Management Practices ("BMP") but does not define the BMPs. Is there a reference where the BMPs are listed and defined?
Reference added to the documents listed in the sub-section above.
13. Starting at 7.2 (2) Applicability the footers switch to chapter 8.
Addressed
14. In 8.3 (2) Fiscal Surety and Assurance of Construction and Maintenance, Chapter 12 is still listed as the Compliance and Enforcement chapter. Should read chapter 11.
Addressed
15. In 8.6 (5) Water c ii. Transferable Water Rights. The word "must" was changed to "may" and separately, the term "It is recommended" replaced the word "must" in the second sentence. Making the water rights transferrable mandatory would have saved Fair Oaks Ranch many legal headaches over the past few years and prevented legal problems with the wells. Keep the transferrable mandatory.
Since this type of requirements has been subject to recent challenge, this language was recommended by legal.

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16. Duplication in the table of contents between sheets 134 and 135 call out chapter 8 and repeat chapter 7 contents. Also sheets 136 thru 154 show Chapter 8 on the footer while it is still chapter 7. Is the index not supposed to be sheet numbered? Chapter 8 index replaces sheet 155. In the "CLEAN" version file, chapter 9 is still shown with comments. Addressed.
- 11.5 (2) - On sheet 233, (2), c; should the sentences, "After Recording Final Plat. Construction of Improvement After Recording Final Plat." be deleted.
- To be addressed as below:
- c. ~~Construction of Improvement After Recording Final Plat.~~ Construction of Improvement After Recording Final Plat. The Developer may request to defer the obligation to construct and install
17. 11.5 (2) Added Site Improvement Trust Agreement (SITA) . Addressed as follows:
- ii. Sufficient Fiscal Surety. The City Manager will require sufficient fiscal ~~surety, equalsurety,~~ equal to 120 percent of the estimated total cost of the improvements not yet completed and accepted as complete, to insure the orderly development within any subdivision or site development in the form of either of the following:
1. A performance bond, or
2. An irrevocable letter of credit, equal to 120 percent of the estimated total cost of the improvements not yet completed and accepted as complete. Such letter of credit or bonds will be issued by a financial institution authorized to do business in the State of Texas. In addition, a Site Improvement Trust Agreement (SITA), as approved by the City will be required. Furthermore, the financial institution will be reviewed and approved in advance and the letters of credit or bonds will conform to forms or criteria approved in advance by the City Council; or
- ~~—Or other fiscal surety as approved by the City Manager or his/her designee.~~
18. In the text in Chapter 7, the maximum allowable number of water connections is set by the water plan. The water plan only allows water connections for the gross buildable area divided by the minimum lot size, In the case of the 2/9 handout, this means only 16 water connections are allowed, not the 22 in the proposed.
- Engineering staff will explain at the meeting.
19. In 8.6 (5) Water a. General Design Standards: Table 8.2 Minimum Water Service Line Sizes minimum size for a lot with "one user" is 1 inch diameter, The current minimum size for Fair Oaks Ranch Utilities is ¾ inch. Why the change?
- Clarification from engineering staff - 3/4" is available for users and is in the impact fees, certain properties can be serviced by a ¾" diameter depending on materials and type of amenity.
20. On sheet 191, A "Licensed Land Surveyor" (LSLS) is a step above a "Registered Professional Land Surveyor" (RPLS). An RPLS should be required. In the same section, we agreed to remove the requirement for 2' iron rods and setting a marker in concrete. Both of these are very difficult in the rocky soils of Fair Oaks Ranch. A 6" bar is sufficient and delete the need for concrete. Should there be a definition of (d) "Markers" and (e) "Corner Markers"?
- Addressed as below.
- Section 8.8 (1) a. and b.

Section 8.8 Monuments and Survey Control Point Markers

(1) Subdivisions and all lots submitted for plat approval must provide monuments and control points as follows:

- a. ~~Registered Professional Land Surveyor (RPLS)~~~~Licensed Land Surveyor~~. All monuments and control points will be placed by a ~~Licensed Land Surveyor, and~~~~Surveyor and Registered Professional Land Surveyor (RPLS)~~ must be in place prior to the installation of any roadway improvements.
- b. Locations. To the extent it is practicable, monuments should be installed in locations that will prevent disturbance or destruction of the monument by construction activities. Any monuments disturbed or destroyed during roadway construction will be reestablished in conformance with the provisions of this Code by a ~~Registered Professional Land Surveyor (RPLS)~~~~Licensed Land Surveyor~~.

Section 8.8 (1) e.

- e. Corner Markers. Corner markers will be a one-half inch iron rod, or three-fourths inch pipe, two feet in length, and will be installed flush with the ground. Depending on the terrain, a six (6) inch bar is permitted as long as it is set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature. Corners of all lots, block corners, street right-of-way P.C.s and P.T.s will be marked with corner markers.

21. Re: Provision for City Manager waiver of application requirements - UDC Chapter 2, section 2.3(1)(b)(i) Administrative Procedures Manual

"The Manager may waive application requirements and may require additional submission requirements to complete a thorough review and ensure compliance with all applicable codes and requirements, after an application has been determined to be complete, when appropriate."

Addressed as below. Removed language added to the last draft.

"The Manager may waive application requirements, and may require additional submission requirements to complete a thorough review and ensure compliance with all applicable codes and requirements, after an application has been determined to be complete, when appropriate. Any such waiver of a standard application requirement item(s) is to be documented/reported to the approving authorities."

22. Revised signage chapter based on legal review.

23. Reinserted golf cart parking.

24. Modified the extension of time section as per legal to incorporate shot-clock provision.