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THURSDAY  
FEBRUARY 14, 2008

HOUSTON  CHRONICLE  
chron.com

# City seeks delay in rules for high-rises

■ Shift in tactics disappoints opponents of Ashby project

By CAROLYN FEIBEL  
HOUSTON CHRONICLE

City officials want to spend up to seven more months to consider ways to regulate traffic from high-density buildings, Mayor Bill White said Wednesday.

The announcement was discouraging for residents who want a quick resolution to the controversy over the proposed Ashby high-rise near Rice University.

White said he would prefer City Council hold off passing a

new traffic study ordinance so the city can hold public hearings that could run through September.

"I think it's a public debate that needs to happen," White said. "To make sure we do this and we do this right."

James Reeder, co-chair of the Stop Ashby High-Rise task force, said, "People would be very upset" at a delay.

The developers of the Ashby project, Matthew Morgan and Kevin Kirton of Buckhead Investment Partners, did not return calls for comment.

The city also is dusting off a 69-year-old driveway law and examining how it might apply to the Ashby project, officials said.

That move represents a major shift in tactics.

## ASHBY: An old driveway statute may apply in high-rise case

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for shift in tactics.

In recent months, lobbying and negotiations had focused on drafting a new ordinance to regulate traffic from high-density complexes. But existing law may do the job, according to City Attorney Arturo Michel.

"There's a mechanism in place right now that we can use," Michel said. "Whether it's the Bissonnet (at Ashby) development or any development, we have a tool that we can apply."

The tool, a section of the city's street and sidewalk code, allows a city engineer to approve or deny a driveway permit for a development, said Andy Icken, the city's deputy director for planning and development.

In the decision, the engineer should consider several factors, according to the ordinance, including the effect of driveway traffic "on the safety of the traveling public and on the movement of traffic in the street to which the driveway connects."

Denying a driveway permit could stop a development.

Relying on an existing ordinance, rather than drafting a new one, may better protect the city should the developers of the Ashby project ever decide to sue, a legal expert said.

"If it's good law and it's been on the books all along, then the developers are presumed to

*"If you can't get to the site, how could the site become a development?"*

—ANDY ICKEN,  
the city's deputy director for planning  
and development

have notice of it," said Matthew Festa, a professor of property rights and land use at the South Texas College of Law. "They can't come back and say they've been treated unjustly."

The city risks exposing itself to a "takings lawsuit" if it passes a new restrictive ordinance after the Ashby developers submit permit applications or site plans, Festa explained. The developer could argue that the city changed the rules after the fact, taking away value from their property.

White acknowledged that problem Wednesday.

"There are some legal doctrines that you can't change the rules in the middle of the game, once somebody has filed certain things," he said.

So far, the city has avoided the legal arena by asking the Ashby developers to hold off submitting applications or plans. The developers have agreed to a series of delays, but

the current one expires Feb. 29.

If the developers submit plans after that, and no new traffic impact ordinance has been passed, the city could use the existing driveway ordinance to exert some control, officials said. But that ordinance last was updated in 1968, and its criteria are vague.

"It's the product of a different time," said Tom Allen, a first assistant city attorney.

More time and public hearings would help the city develop more specific guidelines on how to enforce the old ordinance.

"That's, frankly, the straw man in the conversation right now. Shouldn't we be a little more explicit?" Icken said. The city has not dropped the idea of a new ordinance, either, Icken said.

White repeatedly has said that developers and residents deserve more predictability in the building process.

"We don't think that people should hesitate to invest within the city of Houston . . . but we will protect our position," he said. "We retain the authority we have if somebody proposes to build something that creates gridlock."

Chronicle staff writer Mike Snyder contributed to this report.

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