

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 7, “BUILDINGS,” ARTICLE VIII “FLOODPLAIN PROVISIONS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO REGULATE VALLEY STORAGE OF STORMWATER; ADDING AND REVISING DEFINITIONS RELATED TO VALLEY STORAGE; REORDERING SUMP AREA REGULATIONS; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Texas has, in Chapters 51 and 214 of the Texas Local Government Code conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Fort Worth City Council has adopted Floodplain Management regulations to protect people and property, ensure federal flood insurance and disaster assistance if available, save tax dollars, and reduce future flood losses; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Fort Worth and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare; and

WHEREAS, the City of Fort Worth was accepted for participation in the National Flood Insurance Program on June 4, 1980, and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, the City of Fort Worth adopted building and rehabilitation codes, pursuant to Chapter 214 of the Texas Local Government Code, to protect the public health, safety, and welfare, and such building and rehabilitation codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local government units to adopt regulations designed to minimize flood losses; and

WHEREAS, valley storage refers to the volume of flood water stored between the water surface and the ground surface occupying an area between any two specified points

through which water flows at least periodically, including sump areas that are parts of levee systems; and

WHEREAS, protecting valley storage in special flood hazard areas, sump areas, or in areas where a special flood hazard area would be mapped as a result of land development is necessary to help minimize downstream flood losses;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

Chapter 7, Article VIII, Division 1, Section 7-304 “Definitions” of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby amended to add the following definitions, and to revise the definition of Flood Protection System, to be and read as follows:

FLOOD PROTECTION SYSTEM. Those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a special flood hazard as described in § 7-301 herein and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes, the Storm Drain Systems, and detention/retention systems. These specialized flood modifying works are those constructed to conform to sound engineering standards.

STORM DRAIN PIPE SYSTEM. The portion of the Storm Drain System consisting of underground or enclosed conduits designed to collect and convey stormwater runoff. The Storm Drain Pipe System shall include storm drain pipes, manholes, junction boxes, inlets, and related structures that transport stormwater from surface collection points to outfalls, channels, or other drainage facilities in a manner that is intended to prevent localized flooding and protect public and private property.

STORM DRAIN SYSTEM. The system of conveyances and facilities (including roads with drainage systems, city streets, catch basins, curbs, gutters, detention basins, ditches, man-made channels, watercourses, and storm drains) that are designed or used exclusively to collect or convey stormwater and that are not designed or used to collect or convey wastewater.

SUMP AREAS. Drainage features of levee systems that temporarily store storm water runoff before it is conveyed to a river system by pumping over or draining through a levee.

VALLEY STORAGE. The volume of flood water stored between the water surface and the ground surface which occupies an area between any two specified points of a Watercourse or a Sump Area.

WATERCOURSE. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

SECTION 2.

Chapter 7, Article VIII, Division 3, Section 7-333 “Permit Procedures” of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby amended to amend subsection (a) to be and read as follows:

(a) Application Requirements:

(1) No person shall proceed with development of property within the floodplain until an application is submitted and a Floodplain Development Permit (FDP) is issued.

(2) Prior to issuance of the Floodplain Development Permit (FDP), or authorization to excavate or fill in the floodplain, all required permits must be obtained by the owner from all State and Federal regulatory bodies with jurisdiction in such matters. A copy of the appropriate agency’s approved permit must be provided to the City with the FDP application.

(3) Application for a Floodplain Development Permit (FDP) must be presented to the floodplain administrator on forms provided on the City’s website. The permit application must include, but not be limited to, plans to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

a. An Elevation Certificate for structures on property located in or abutting the floodplain. The certificate must be completed by a registered public land surveyor or professional engineer and include the elevation in relation, to mean sea level, of the lowest floor including basement, finished garage and lowest elevation of machinery or equipment servicing the building, of all new and substantially improved structures. The certificate must be submitted within 60 days of completion of construction or substantial improvement;

b. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed (floodproofing requirements are set forth in § 7-347(b));

c. Certification from a registered professional engineer or architect that the nonresidential floodproofed structures shall meet the floodproofing criteria of § 7-347(b);

d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

~~e. Valley storage evaluation for sites located within a sump area associated with the Trinity River levee system. The determination of valley storage impacts consists of a comparison of pre-project (existing) conditions and post-project conditions. The maximum allowable valley storage decrease for the 1% annual chance flood is 0.0%; and~~

~~f.~~ For existing structures within the floodplain that do not conform to current floodplain management standards, the Substantial Improvement or Substantial Damage Review Package must be submitted to obtain the substantial improvement or substantial damage determination.

1. If the proposed work is determined to be a substantial improvement then the entire structure must be brought into compliance with this article.

2. If the proposed work does not constitute a substantial improvement then the existing structure may be improved (remodeled) without conforming to requirements in this

article. Once a property has been issued a floodplain development permit using the fifty (50) percent rule, any additional improvements thereafter will be tracked over a total of five (5) years. These improvements within the five-year period cannot exceed fifty (50) percent of the fair market value of the existing structure at the time of issuance of said first floodplain development permit.

(4) No application shall be accepted for review until the application meets the requirements of this article, including all necessary documents and supporting information. Applications that do not include all necessary documentation and supporting information shall be deemed not complete.

SECTION 3.

Chapter 7, Article VIII, Division 4, Section 7-347 “Specific Standards” of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby amended to add subsection (k) to be and read as follows:

(k) Compensatory Valley Storage

(1) *Watercourse.* No reduction in Valley Storage (0.0%) is allowed anywhere within a FEMA Special Flood Hazard Area (SFHA) and anywhere the contributing drainage area is 64 acres or greater (where a FEMA SFHA would eventually be mapped) when comparing pre-project (existing) to post-project (proposed) topography using existing land use hydrology. Evaluation of floodplain development permit applications for Valley Storage in Watercourse areas will be based on the following criteria:

a. A Valley Storage impact analysis is performed as part of a Drainage and/or Flood Study, in accordance with the Stormwater Criteria Manual, by comparing the pre-project (existing) conditions and post-project (proposed) conditions topography below the 1% annual chance “100-year”, 20% annual chance “5-year”, and 100% annual chance “1-year” water surface elevations, respectively. For a project that would impact Valley Storage to a SFHA that does not require a new hydrologic analysis, then the 1% annual chance and 10% annual chance “10-year” peak discharges may be used from the effective FEMA Flood Insurance Study (FIS) or best available data as determined by the floodplain administrator or their designee. Compensatory storage and related calculations are not required for projects that do not involve grading within the FEMA areas described in 7-347(k)(1), for any of the design storms specified in this section.

b. An equivalent volume of Valley Storage must be provided for each design flood, as described in the Stormwater Criteria Manual, within the same Watercourse reach as the proposed development. The Floodplain Administrator, or their designee, shall determine the proposed reach limits.

c. *Exceptions.* Subsection (k) shall not apply to the following:

1. Construction of new roadways or widening of existing roadways by the City;
2. Watercourses that are proposed to be within a Storm Drain Pipe System at the upstream limit of the SFHA (existing or proposed), as described in 7-347(k)(1)(a);
3. Outfall and intake structures;
4. Utility Crossings;
5. Bank stabilization activities; and
6. Maintenance, repair, or approved equivalent replacement of existing infrastructure.

d. *Trinity River.* Development within the Trinity River Corridor shall be consistent with Division 6 of this Article.

(2) *Sump Areas.* No reduction in Valley Storage (0.0%) is allowed at sites located within a Sump Area for the 1% annual chance “100-year” design flood. Evaluation of floodplain development permit applications for Valley Storage in Sump Areas will be based on the following criteria:

a. The 1% annual chance water surface elevation found in the FEMA FIS shall be used when available. When not available, the Floodplain Administrator, or their designee, shall determine the 1% annual chance water surface elevation.

b. The determination of compensatory Valley Storage impacts consists of a flood study comparing pre-project (existing) conditions and post-project conditions topography below the 1% annual chance water surface elevation.

c. *Exceptions.* If a floodplain development permit is requested for one single-family lot, the flood study requirement may be waived by the Floodplain Administrator, or their designee, if the home is constructed using a “pier and beam” or similar construction method to preserve flood storage beneath the lowest floor.

d. An equivalent volume of Valley Storage must be provided within the designated Sump Area of the proposed development.

(3) *Variances.* A variance to the compensatory Valley Storage requirements may be granted in conformance with the provisions of Section 7-334.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 5.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 7.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts.

SECTION 8.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption and Section 6 of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas as authorized by Chapter XXV, Section 2 of the Charter of the City of Fort Worth, Texas, and Section 52.013(a) of the Texas Local Government Code.

SECTION 9.

This ordinance shall take effect after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY: ATTEST:

Kevin Anders
Assistant City Attorney

Jannette S. Goodall
City Secretary

ADOPTED: _____

EFFECTIVE: _____