

ORDINANCE NO. 2015-12-099

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF CHAPTER 130, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY DELETING SECTION 130-384, "VERIFICATION OF FLOODPLAIN ALTERATIONS," IN ITS ENTIRETY AND REPLACING SAID SECTION 130-384 WITH A NEW SECTION 130-384 THAT IS ALSO ENTITLED "VERIFICATION OF FLOODPLAIN ALTERATIONS" TO MAKE MINOR REVISIONS TO SUBSECTIONS (A) AND (C) AND ADOPT A NEW SUBSECTION (D) TO ALLOW FOR THE DEVELOPMENT OF PLATTED LOTS WHILE AWAITING APPROVAL OF A FEDERAL EMERGENCY MANAGEMENT AGENCY LETTER OF MAP REVISION TO THE FLOOD INSURANCE RATE MAP; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas, (the "City") is a Home-Rule City possessing the full power of local self-governance pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney, Texas, finds and determines that the City's current stormwater management regulations should be amended to allow the development of property to continue pending the approval of a Letter of Map Revision ("LOMR") by the Federal Emergency Management Agency to better serve the needs of the City; and

WHEREAS, the City Council of the City of McKinney, Texas, finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to delete Section 130-384, "Verification of Floodplain Alterations," of the McKinney Code and replace said Section with a new Section 130-384 that is also entitled "Verification of Floodplain Alterations."

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. FINDINGS

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. AMENDMENT OF CHAPTER 130, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY DELETING SECTION 130-384, "VERIFICATION OF FLOODPLAIN ALTERATIONS," IN ITS ENTIRETY AND REPLACING SAID SECTION 130-384 WITH A NEW SECTION 130-384 THAT IS ALSO ENTITLED "VERIFICATION OF FLOODPLAIN ALTERATIONS" TO MAKE MINOR REVISIONS TO SUBSECTIONS (A) AND (C) AND ADOPT A NEW SUBSECTION (D) TO ALLOW FOR THE DEVELOPMENT OF PLATTED LOTS WHILE AWAITING APPROVAL OF A FEDERAL EMERGENCY MANAGEMENT AGENCY LETTER OF MAP REVISION TO THE FLOOD INSURANCE RATE MAP

From and after the effective date of this Ordinance, Chapter 130, entitled "Land Development Regulations," is hereby amended by deleting Section 130-384, "Verification of Floodplain Alterations," in its entirety and

replacing said Section with a new Section 130-384 that is also entitled "Verification of Floodplain Alterations," to read as follows:

" Sec. 130-384. Verification of floodplain alterations.

(a) Prior to final city acceptance of utilities and street construction for projects involving floodplain alterations or adjacent to defined floodplains, creeks, channels, and drainageways, a certified statement shall be prepared by a registered professional land surveyor, or a licensed professional engineer, showing that all lot elevations, as developed within the subject project, meet or exceed the required minimum finished pad elevations necessary to create the minimum finished floor elevations as shown on the record plat of the subdivision. This certification shall be filed with the director of engineering.

(b) In addition, at any time in the future when a building permit is desired for an existing platted property, which is subject to flooding or carries a specified or recorded minimum finished floor elevation, a registered professional land surveyor or a registered professional engineer shall prepare a certified statement that sites are built to the design elevations. The certified survey data showing the property to be at or above the specified elevation shall be furnished to the Chief Building Official for approval. A certificate of compliance with the provisions of this article, pertaining to specified finished floor elevations, shall be required.

(c) The applicants shall furnish, at their expense, to the director of engineering the above certifications and any other certified engineering and surveying information requested by the director of engineering to confirm that the required minimum floor and pad elevations have been achieved. Save and except as provided in subsection (d), below, building permits will not be issued until:

- (1) A letter of map revision or amendment has been issued by FEMA; and
- (2) Lots and/or sites are certified by a registered professional land surveyor or a registered professional engineer that they are elevated from the floodplain according to FEMA-approved revisions to the floodplain and the requirements of this article.

(d) As an alternative to the above requirements the following procedure may be used to obtain subdivision acceptance, record a final plat which includes a lot, and/or obtain a building permit for a lot within an area shown as flood plain on an existing FEMA map that is proposed to be reclaimed pursuant to, and prior to the approval of a Letter of Map Revision (LOMR) by FEMA:

- (1) A City reviewed and approved Conditional Letter of Map Revision (CLOMR) must have been submitted to and approved by FEMA.
- (2) The infrastructure must have been constructed in accordance with plans and specifications, accepted by the City, and in substantial conformance with the FEMA-approved CLOMR as determined by the Floodplain Administrator.

- (3) A LOMR must have been submitted to and approved by the City, and then submitted to and receipt acknowledged by FEMA.
- (4) A record plat that includes the lot must have been approved that includes the proposed revised floodplain line (the floodplain line on the then effective FEMA map will not be shown) and the following form of note prominently affixed on the record plat: *The floodplain line shown on this plat represents a proposed floodplain line that has been designated on a FEMA-approved CLOMR Number X-XXXX, for which a LOMR has been submitted and after approval of which LOMR, if it is approved by FEMA, will become the effective FEMA floodplain delineation.*
- (5) An elevation certificate must have been issued confirming that the pad elevation for the lot is at or above the proposed adjacent base flood elevation shown on the submitted LOMR.
- (6) The developer must present to the City a signed affidavit affirming that the proposed lot is currently within the flood plain as shown on the effective FEMA FIRM and that flood insurance must be obtained and maintained in order to receive a final green tag or certificate of occupancy prior to the effective date of FEMA approval of the LOMR.
- (7) An agreement must be entered into between the City and the developer that contains the following provisions and attachments:
 - (a) An executed engineering contract between the developer and its engineer covering the scope of services required to complete the LOMR process (the " Engineering Contract"), conditionally assigned to the City;
 - (b) An escrow of funds/bond in an amount equal to 120% of the cost of the work remaining under the Engineering Contract relating to the LOMR process to ensure the completion of the LOMR process; and
 - (c) A provision acceptable to the City Attorney whereby the developer indemnifies the City from and against any and all claims that might arise out of or be related to this alternative process.
- (8) In order to obtain a final green tag or certificate of occupancy as appropriate for a habitable structure on the lot, the following must be accomplished:
 - (a) All other requirements for the final approval have been met;
 - (b) The record plat that includes the lot has been filed; and
 - (c) Proof that a policy of flood insurance written by an insurance company licensed to do business in the state of Texas and authorized to issue flood insurance policies, prepaid for up to two (2) years as determined by the Director of Development Services, has been issued for all habitable structures on the lot.

- (9) Subsequent to issuance of a green tag or a certificate of occupancy but prior to a property buyer taking ownership of the property, the property buyer shall sign an affidavit that acknowledges the property buyer agrees and understands:
- (a) The improvements on the lot are located in an area shown on the effective FEMA FIRM as being in the floodplain;
 - (b) A Letter of Map Revision has been sent to FEMA which, if approved, will modify the FIRM such that the improvements will no longer be shown as being located within the floodplain;
 - (c) FEMA may not approve the LOMR;
 - (d) If FEMA does not approve the LOMR the improvements will continue to be shown as being in the floodplain and the property buyer's right to use, repair, replace, restore, rebuild or expand the improvements may be limited or even prohibited;
 - (e) The property buyer is assuming the foregoing risks and agrees to indemnify and hold the City harmless from and against any and all claims arising out of the absence of a FEMA approved LOMR; and
 - (f) The property buyer understands the property buyer will be solely responsible for purchasing flood insurance."

Section 3. REPEALER CLAUSE

This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 4. SEVERABILITY CLAUSE

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. RESERVATION OF EXISTING RIGHTS AND REMEDIES

All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any Ordinances which 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 6. **IMMUNITY**

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 7. **INJUNCTIONS**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of McKinney.

Section 8. **PENALTY**

Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of McKinney, Texas, shall be punished by a fine not to exceed the sum of five hundred dollars (\$ 500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 9. **PUBLICATION**

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 10. **EFFECTIVE DATE**

This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 1st DAY OF DECEMBER, 2015.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney