

ORDINANCE NO. 2018-04-\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 130, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF EXISTING ARTICLE IV, ENTITLED "STORMWATER MANAGEMENT," BY AMENDING PORTIONS OF SECTIONS 130-266, 130-267, 130-355, 130-356, 130-357, 130-358, 130-383, AND 130-416 AS SET FORTH HEREIN BELOW; REPEALING ALL CONFLICTING ORDINANCES; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of McKinney, Texas is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

**WHEREAS**, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

**WHEREAS**, the City Council of the City of McKinney, Texas enacted Chapter 130 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), adopting the terms for land development regulations and has recognized that certain provisions of the McKinney Code should be reviewed and updated from time to time; and

**WHEREAS**, the City of McKinney, Texas has updated its design criteria and policies through the adoption and implementation of a new Engineering Design Manual for the City of McKinney that will take effect on or about April 4, 2018 ("Engineering Design Manual") and replace City of McKinney Street, Stormwater, and Water and Wastewater Design Manuals that were previously adopted; and

**WHEREAS**, Chapter 130 of the McKinney Code must be consistent with the requirements, terms, and standards of the Engineering Design Manual; and

**WHEREAS**, the purpose of the Engineering Design Manual is to protect the health, safety, and welfare of the public by establishing standard engineering practices and minimum engineering criteria for application throughout the City of McKinney, Texas, and to the fullest extent allowed by law in its extraterritorial jurisdiction; 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 amend certain provisions of Article IV entitled "Stormwater Management" of Chapter 130 of the McKinney Code as provided herein below.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. From and after the effective date of this Ordinance, Section 130-266(1)d of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-266(1)d to hereafter read as follows:

“d. *Erosion hazard setbacks.* Erosion hazard setbacks will be utilized to provide stream bank protection for all streams within the city. In all cases, a buffer shall be created and protected by easement for the determined setbacks. The setback limits may be altered through mechanical stream bank protection if such mechanical stabilization is approved by the director of engineering and record platted consistent with the protected bank area. Where erosion hazard setback easements are established, no building, fence, wall, deck, swimming pool, or other structure shall be located, constructed, or maintained within the area encompassing the setback. The exception to this restriction shall be any hike and bike trail dedicated to the city which may be constructed within the outer ten feet of the determined erosion hazard setback easement or as otherwise determined appropriate by the director of engineering. The setback requirement for each stream or channel shall be determined as described in the engineering design manual and shall be shown on the record plat. The channel and the area adjacent to the channel shall be platted as a common area lot to be owned and maintained by the applicable homeowners' association. This common area lot shall encompass all of the erosion hazard setback easement. Commercial developments are exempt from platting the erosion hazard setback easement as a dedicated common area.”

Section 3. From and after the effective date of this Ordinance, Section 130-266(2) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-266(2) to hereafter read as follows:

“(2) *Development permit (floodprone areas).* All developers, owners, or builders shall submit a floodplain application and obtain a development permit before beginning any projects in floodplain areas, such as constructing new buildings and infrastructure, filling land, altering waterways, substantially improving existing structures located in flood hazard areas or channelizing, impounding, realigning, deepening or other altering of a natural drainageway. Application forms can be obtained from the director of engineering. The director of engineering uses the application, along with duplicate copies of the accompanying engineering or architectural plans, to identify those construction or renovation projects that would occur in a special flood hazard area. The engineering design manual identifies the information that must be submitted to the director of engineering as part of the permit application. Construction or renovation projects cannot begin until the city issues the development permit, and building permits cannot be issued before obtaining a development permit.”

Section 4. From and after the effective date of this Ordinance, Section 130-267, “Plan Requirements,” of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-267, also entitled “Plan Requirements,” to hereafter read as follows:

“Sec. 130-267. - *Plan requirements.*

Application materials and plan requirements for storm sewers or floodplain alterations are listed below. All engineering plans for storm sewers, floodplain alteration projects, and tracts greater than one acre in size shall be sealed by a professional engineer who is registered in the state and experienced in civil engineering work. The total cost for

preparing the engineering plans and implementing the plans shall be borne by the applicant.

- (1) *Storm drainage plans.* As part of the platting process, storm drainage plans shall be prepared. These plans shall include drainage facilities for both off-site and on-site drainage, so that the proper transition between the two can be maintained. Criteria for on-site development shall also apply to off-site improvements. The construction of all improvements shall be in accordance with the current specifications and regulations adopted by the city. Storm drainage plans shall be prepared in accordance with the engineering design manual.
  
- (2) *Application materials for development permits.* Owners or builders who are planning to renovate existing structures or construct new structures shall apply for a building permit. Prior to submitting an application for a building permit the owner or builder shall determine whether the property on which such existing or proposed structures are situated, or will be situated, is located within a flood-prone area. If the property is located within a flood-prone area the owners or builders shall submit a floodplain permit application. Such floodplain permit application shall be submitted and a floodplain permit issued to the owner or builder by the city prior to the owner's or builder's submission of an application for a building permit. If the owner or builder fails to obtain a floodplain permit before submitting an application for building permit and the city's floodplain administrator and/or city staff determines during the permit review that the proposed project is located in a flood-prone area, then any further review and approval of a building permit shall be suspended and withheld until such time as the building permit applicant applies for and receives a floodplain permit and a development permit through the director of engineering as provided in section 130-266(2). The owner or builder shall submit for review duplicate copies of the appropriate materials as required by the engineering design manual. Owners or developers who are proposing to build or expand subdivisions shall submit a floodplain application and a development permit application as provided in section 130-266 (2). If the owner or developer proposing to build or expand subdivisions fails to obtain a floodplain permit before submitting an application for a building permit and the city staff determines the proposed work to be in flood hazard areas, then any further review and approval of a building permit shall be suspended and withheld until such time as the applicant applies for and receives a floodplain permit and a development permit through the director of engineering as provided in section 130-266(2). The owner or developer shall submit for review duplicate copies of the additional appropriate materials outlined in the engineering design manual.

It is recommended that applicants coordinate the application materials listed with those needed with other city permits and with the data requirements of FEMA. Such coordination will facilitate staff review, and drawings could be combined to save the applicant from making multiple drawings.

- (3) *Water quality protection.* McKinney's Stormwater Management Program requires that all new development and redevelopment projects provide water quality protection by implementation of post construction, structural, and non-structural best management practices. Prior to the start of construction activities for both new development and redevelopment, developers and/or builders must submit a detailed post construction water quality protection plan,

incorporating current and appropriate best management practices to the director of engineering for review and approval. A maintenance plan for the approved water quality BMPs must be included with the plan submittal. Maintenance performance for the approved plan shall be the responsibility of the HOA or property owner and this maintenance performance responsibility must be clearly indicated on the record plat. The specific requirements for a water quality protection plan and guidelines for water quality protection BMPs can be found in the engineering design manual.”

Section 5. From and after the effective date of this Ordinance, Section 130-355(a) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-355(a) to hereafter read as follows:

“(a) *Channel design.* Unless approved by the director of engineering, open channels shall not be permitted when the inside pipe diameter required to carry the fully developed 100-year flow is 60 inches or less. Exceptions to this prohibition might be residential estate subdivisions and other areas where there are significant natural features, including trees, springs, exposed channels, and other environmental items that would work positively into the aesthetics of a development. Criteria for determining the nature of open channels is found in the engineering design manual.”

Section 6. From and after the effective date of this Ordinance, Section 130-356(c)(3)a of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-356(c)(3)a to hereafter read as follows:

“a. The classification of a dam based on the above criteria will be used to determine the spillway design flood (SDF). The total capacity of a dam structure, including principal and emergency spillways, shall be adequate to pass the SDF without exceeding the top of dam elevation. The SDFs for various dam classifications are shown in the engineering design manual.”

Section 7. From and after the effective date of this Ordinance, Section 130-357(b) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-357(b) to hereafter read as follows:

“(b) The city shall control future development upstream, downstream, and adjacent to all NRCS dams and lakes. Planning for future development that impacts on or is impacted by NRCS dams shall require a detailed engineering study to provide a technical basis for development. Design for upgrading dams shall comply with other sections of this article and the engineering design manual. Furthermore, the dam shall be upgraded as follows:

- (1) Provide principal spillway capacity adequate to discharge the routed 100-year flood event based on fully developed watershed conditions and limited to constraints including both hydraulic capacity and channel stability immediately downstream;
- (2) Provide total capacity of the dam structure, including principal and auxiliary spillways to accommodate the probable maximum flood (PMF);
- (3) Maintain existing flood storage and planned sediment storage capacities;
- (4) Prohibit upstream development within the contour line determined by the auxiliary spillway crest elevation plus two

feet, or the routed 100-year flood elevation (based on fully developed watershed conditions and the improved dam) plus two feet, whichever elevation is greater. In addition, the areas required for reasonable maintenance access to the lake, dam, and associated appurtenances and for safe operation of the spillway for the existing and rehabilitated dam shall be preserved and protected from encroachment through easement. These easements shall be described by a metes and bounds survey; and

- (5) Restrict development and improvements within the floodplain established by a breach flow analysis from the dam to the downstream limit of the dam breach impact. Commercial development may be allowed below NRCS dams that have been rehabilitated to safely pass the PMF, if conditions warrant and with approval of the director of engineering.”

Section 8. From and after the effective date of this Ordinance, Section 130-358, “Detention and Retention Facilities,” of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-358 also entitled “Detention and Retention Facilities” to hereafter read as follows:

“Sec. 130-358. - Detention and retention facilities.

- (a) Detention/retention facilities may be required to reduce runoff rates due to inadequate storm drainage facilities or increased zoning resulting in a significant increase in runoff rates, volume or frequency. Where detention is required and practicable, regional detention is encouraged. Calculations to verify downstream adequacy of hydraulic capacity shall be performed in accordance with the ten percent rule as defined in section 130-183. If an approved study demonstrates that the downstream facilities and stream system can adequately convey the fully developed 100-year storm event and required easements exist or can be obtained, then detention is not required.
- (b) Detention/retention facilities shall be designed to safely pass all storms up to and including the fully developed 100-year storm event according to criteria in the engineering design manual.
- (c) Detention/retention facilities shall be required to have a maintenance plan that considers debris removal, mowing, trimming, and a regular inspection schedule. The plan shall be provided to the director of engineering and implemented by the property owner. The minimum maintenance requirements therefor may be found in the engineering design manual.”

Section 9. From and after the effective date of this Ordinance, Section 130-383(a)(4) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-383(a)(4) to hereafter read as follows:

- “(4) Alterations to the floodplain are permitted without consideration to the water surface elevations when the entire floodplain is on the owner's, builder's or developer's own property. No rise in water surface elevations of the fully developed 100-year flood event of the creek is permitted on adjacent properties unless the rise is fully contained within a floodplain or drainage easement.”

Section 10. From and after the effective date of this Ordinance, Section 130-383(c) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-383(c) to hereafter read as follows:

“(c) The required submittals for a floodplain, grading or development permit are listed in section 130-267(2). The flood routing and modeling requirements needed for projects involving floodplain areas can be found in the engineering design manual. Flood routing information shall be used to ensure any changes in floodplain valley storage will not cause downstream increases in water surface elevations.”

Section 11. From and after the effective date of this Ordinance, Section 130-416(d) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 130-416(d) to hereafter read as follows:

“(d) *Final acceptance.* Developers, builders, or owners of property shall install the applicable landscape plan and all utilities, including franchise utilities, before final acceptance of a subdivision, property and/or structure. Final acceptance will also be contingent upon having permanent stabilization measures initiated (such as required perennial vegetative cover) and all necessary erosion control measures as approved, installed, and maintained to minimize off-site sediment deposition. The owner shall continue to maintain the erosion control measures until permanent stabilization measures are fully established. A site may be accepted, at the discretion of the director of engineering, without erosion control measures, if perennial vegetative cover is established with > 70 percent density and actively growing, and if all conditions of any permits (including 404, SWP3, etc.) have been met prior to acceptance. Any and all off-site areas disturbed during construction must be fully vegetated and established with > 70 percent density and actively growing prior to final acceptance of the project.

(1) For subdivisions, the developer shall continue to maintain all temporary erosion control devices until permanent stabilization measures have been established on all those lots within the subdivision for which a building permit has not been issued.

(2) For nonresidential or multifamily construction projects requesting phased acceptance, permanent stabilization shall be established prior to the occupancy of the requested phase. Phased occupancy will be allowed only when there are no outstanding erosion control violations for the project for which the request is made.”

Section 12. 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 13. 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 14. 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 15. 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 16. 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 17. Any person, firm or corporation violating any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation shall continue shall be deemed to constitute a separate offense.
- Section 18. 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 19. 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 THIS 3<sup>RD</sup> DAY OF APRIL, 2018.**

CITY OF MCKINNEY, TEXAS

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GEORGE C. FULLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney