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DRAFT ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 7, “BUILDINGS,” ARTICLE VIII “FLOODPLAIN PROVISIONS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2022), AS AMENDED, BY REVISING SECTION 7-316 AND ADDING DIVISION 7, “DEVELOPMENT WITHIN THE CITY FLOOD RISK AREAS” TO REGULATE DEVELOPMENT WITHIN CITY FLOOD RISK AREAS; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Texas has, in both 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 City of Fort Worth has participated, since 1980, in the National Flood Insurance Program which provides separate regulations designed to protect against public and private losses due to flooding within Federal Emergency Management Agency (“FEMA”) Special Flood Hazard Areas which are areas 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 of citizens; and

WHEREAS, the City of Fort Worth City Council has adopted floodplain management regulations and building and rehabilitation codes, pursuant to Chapter 214 of the Texas Local Government Code and requirements imposed under the National Flood Insurance Program, related to design and construction of buildings and structures in FEMA Special Flood Hazard Areas to protect people and property, ensure Federal flood insurance and disaster assistance is available, save tax dollars and reduce future flood losses; and

WHEREAS, over the last decade or more, the City of Fort Worth has identified increased instances of properties and developments outside of the FEMA Special Flood Hazard Areas that have been affected by flood events; and

WHEREAS, there is currently no additional regulations that deter, protect, and prevent against flood risks for areas outside of the FEMA Special Flood Hazard Areas; and

WHEREAS, through this Ordinance, it is the intent of the City of Fort Worth City Council to establish regulations that will promote and protect the public health, safety and general welfare

of the residents of the City of Fort Worth by establishing provisions that minimize public and private losses due to flood conditions within identified City Flood Risk Areas that are not currently addressed by the FEMA Special Flood Hazard Areas.

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

SECTION 1.

Chapter 7, “Buildings,” Article VIII, “Floodplain Provisions,” Division 2, “General Provisions,” Section 7-316 of the Code of the City of Fort Worth, (2022), is hereby amended in its entirety to be read as follows:

§ 7-316 LANDS TO WHICH THIS ARTICLE APPLIES.

Divisions 1 through 6 of this Article shall apply to all Special Flood Hazard Areas within the City of Fort Worth or otherwise under its jurisdiction and control. Division 7 of this Article shall apply to all City Flood Risk Areas within the City of Fort Worth or otherwise under its jurisdiction and control.

SECTION 2.

Chapter 7, “Building Code,” Article VIII, “Floodplain Provisions,” of the Code of the City of Fort Worth, (2015), is hereby amended by adding Division 7, “Development Within the City Flood Risk Areas” to be and read as follows:

DIVISION 7: DEVELOPMENT WITHIN THE CITY FLOOD RISK AREAS

§ 7-392.1 STATEMENT OF PURPOSE.

Although the City of Fort Worth participates in the National Flood Insurance Program which provides separate regulations designed to protect against public and private losses due to flooding within FEMA Special Flood Hazard Areas, there is currently no additional regulations that deter, protect, and prevent against flood risks for areas outside of the FEMA Special Flood Hazard Areas. It is for that reason that Division 7 has been created, to promote and protect the public health, safety and general welfare of the residents of the City of Fort Worth by establishing provisions that minimize public and private losses due to flood conditions within the identified City Flood Risk Areas that are not addressed by the FEMA Special Flood Hazard Areas.

§ 7-392.2 DEFINITIONS.

For the purpose of this division, the following words, phrases and terms shall have these meanings:

CITY FLOOD RISK AREAS (CFRA). Areas designated by the City, located generally upstream of the FEMA regulatory floodplains, where detailed engineering studies were prepared for specific watersheds indicate that storm water runoff accumulates due to concentration of flow, storm drain capacity limitations, and obstructions based on topography.

CFRA CERTIFICATE OF COMPLIANCE. A certificate required by the City for Development with a Land Disturbance of less than one acre within a CFRA.

COMMON PLAN OF DEVELOPMENT. Shall have the meaning ascribed to that term in the Stormwater Criteria Manual.

DESIGN FLOOD ELEVATION (DFE). Within the CFRAs, this means, water surface elevations of the 1% annual chance flood event (also known as 100-year) plus 2 feet of freeboard.

DEVELOPMENT. Any human-made change to improved or unimproved real property, including but not limited to, the construction or alteration of buildings or other structures such as residential structures, non-residential structures, fences, sheds, garages, and retaining walls, or the filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

MINOR PROJECT. A Development of less than one acre within a CFRA that does not cause an obstruction to floodwaters, does not increase the natural grade of the property, and will not increase floodwater elevations such as, but not limited to, paving a driveway or parking area at the existing grade, small isolated obstructions such as mailboxes or single telephone poles, and interior remodels with no revisions to the existing footprint of the structure.

§ 7-392.3 ESTABLISHMENT OF CFRA CERTIFICATE OF COMPLIANCE.

- (a) A CFRA Certificate of Compliance is required for Developments with less than one acre of land disturbance to ensure compliance with the provisions of this Division. A Development with areas of land disturbance of one acre or more will not require a CFRA Certificate of Compliance, but must comply with the City's Stormwater Criteria Manual. No Development shall occur on any land within a CFRA unless a CFRA Certificate of Compliance or a Stormwater Drainage Study has been approved by the City.
- (b) No building permit shall be issued for any property that does not have a CFRA Certificate of Compliance or a Stormwater Drainage Study approved by the City, unless the City has determined that the Development is a Minor Project or grants a Variance to the requirements of this Division.
- (c) Exemptions for Minor Projects. Minor Projects can be permitted without requiring a CFRA Certificate of Compliance per the discretion of the Floodplain Administrator or their designee. The Floodplain Administrator, or their designee, will make the determination, in their sole discretion, as to whether a project will receive an exemption as a Minor Project.

§ 7-392.4 CFRA DEVELOPMENT PROCEDURES.

- (a) The owner or representative of any proposed public or private Development shall verify if the proposed Development is located inside a CFRA prior to submitting an application to the City for a building permit.
- (b) A proposed Development in a CFRA with a land disturbance of one acre or more, or that is less than one acre but is part of a Common Plan of Development shall comply with the Stormwater Criteria Manual and submit and obtain the City's approval of a Stormwater Drainage Study.
- (c) A proposed Development in a CFRA with a land disturbance of less than one acre that is not a Minor Project, and is not part of a Common Plan of Development, shall comply with the following:
 - (1) A licensed professional engineer registered with the State of Texas must fully complete and place their engineering seal on a CFRA Certificate of Compliance; and
 - (2) The completed and sealed CFRA Certificate of Compliance must be submitted to the City with the building permit application for review.
- (d) Unless a variance has been granted by the City or a Development activity has been determined by the Floodplain Administrator, or their designee, to be a Minor Project, the City will not approve any Development activity in a CFRA until either a CFRA Certificate of Compliance or a Stormwater Drainage Study has been reviewed and approved by the City.

§ 7-392.5 STORMWATER CRITERIA MANUAL ADOPTED STANDARDS.

The current edition of the Stormwater Criteria Manual, and all subsequent amendments and revisions thereto are hereby adopted and incorporated herein by reference. All Development within a CFRA shall comply with the Stormwater Criteria Manual and the provisions of this Division.

§ 7-392.6 CFRA DEVELOPMENT STANDARDS.

- (a) The finished floor elevation of any proposed structure, any addition to an existing structure, or the relocation of an existing structure in a CFRA, must be at or above the DFE, or the structure shall be either wet or dry floodproofed to at or above the DFE.
- (b) For all structures mitigated by elevation, a post-construction elevation certificate must be submitted to the City within 60 days of completion of construction in the form required by the Floodplain Administrator. The elevation certificate must be completed by a registered public land surveyor or licensed professional engineer. The elevation certificate must indicate the elevation of the structure in relation to mean sea level of the lowest floor,

including a basement, finished garage, and the lowest elevation of machinery or equipment servicing the building.

- (c) For all structures mitigated by floodproofing, the floodproofing method must be shown on the construction plans. The structure and attendant utility and sanitary sewer facilities must be floodproofed to at or above the DFE. All wet or dry floodproofing shall be completed in accordance with Federal Emergency Management Agency's floodproofing requirements and guidelines which are hereby adopted and incorporated herein by reference. A person commits an offense if the person fails to establish the finished floor elevation of a structure in a CFRA at or above the DFE, or fails to wet or dry floodproof a structure in a CFRA at or above the DFE, as required by this Section.
- (d) If a Develop or proposed Development is part of a Common Plan of Development, then the Development or proposed Development must comply with the Stormwater Criteria Manual.

§ 7-392.7 REVIEW OF CFRA DEVELOPMENT; APPROVAL; DENIAL OF APPROVAL.

The Floodplain Administrator, or their designee, shall deny any application for a building permit located in a CFRA unless it complies with the provisions of this Division 7 or the Stormwater Criteria Manual, as applicable, unless a variance is approved by the City or the Development is determined by the Floodplain Administrator to be a Minor Project. The process for the review, approval and denial of the CFRA Certificate of Compliance and the Stormwater Drainage Study shall be in accordance with this Division and the Stormwater Criteria Manual.

§ 7-393.8 CFRA VARIANCES.

A property owner may request a variance to the CFRA Development Procedures in accordance with the Stormwater Criteria Manual.

§ 7-392.9 CFRA ENFORCEMENT.

- (a) Violations. A person commits an offense by commencing Development within a CFRA without a CFRA Certificate of Compliance or a Stormwater Drainage Study that is approved by the City.
- (b) Penalties. A person who commits a violation of any provision of this Division 7 shall return the property to its previous condition, or comply with this Division 7.
- (c) Enforcement. The Floodplain Administrator, or their designee, or any code compliance officer, shall have the authority to enforce the provisions of this Division 7.
- (e) A violation of any provision of this Division 7 shall be enforceable in accordance with Section 7-351 of the City Code and state law.

SECTION 3.

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 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections 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 5.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provision 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 6.

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 7.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas as authorized by the V.T.C.A. Local Government Code Subsection 52.013.

SECTION 8.

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

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Thomas R. Hansen
Assistant City Attorney

Jannette S. Goodall, City Secretary

ADOPTED: _____