

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12.5, “ENVIRONMENTAL PROTECTION AND COMPLIANCE,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO AMEND SECTION 12.5-111 AND TO REPEAL AND RESTATE ARTICLE X TO REVISE REGULATIONS RELATING TO GRADING PERMITS AND IDENTIFY THE DEPARTMENT RESPONSIBLE FOR ENFORCING VIOLATIONS RELATING TO GRADING PERMITS AND FILL MATERIAL; 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, in response to the enactment of House Bill 3167 by the 87th Texas Legislature, the City is modifying its Stormwater Criteria Manual (“Manual”) to ensure compliance with the new law; and

WHEREAS, as part of the modification of the Manual, the development review processes are being revised to eliminate final integrated Stormwater Management (“iSWM”) Plans and to replace them with drainage studies; and

WHEREAS, the Grading Permit Ordinance currently allows an iSWM Plan to be substituted for a grading permit; and

WHEREAS, the Grading Permit Ordinance should be updated to remove the ability for an iSWM Plan to be substituted for a grading permit; and

WHEREAS, additional revisions to the Grading Permit Ordinance are necessary to clarify when a grading permit is necessary to prevent land disturbances that create potential flooding and erosion conditions; and

WHEREAS, revisions to the Grading Permit Ordinance to add requirements for development projects containing common plans of development causing land disturbances of one acre or more will help prevent flooding and erosion issues; and

WHEREAS, the amendments to the Grading Permit Ordinance will promote consistent standards and consistent application of development processes, simplify the development review process, and promote the City’s goal of continuous improvement and efficiency; and

WHEREAS, the City Council finds it necessary to amend the Grading Permit Ordinance to control land disturbance and grading of property within the City;

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

SECTION 1.

Chapter 12.5, “Environmental Protection and Compliance,” Article I “Administration and Enforcement,” Division 3 “Enforcement,” Section 12.5-111 “Enforcement Options,” Subsection (b)(1) of the Code of the City of Fort Worth, (2015), as amended, is hereby amended to be read as follows:

- (1) Department of environmental management:
 - a. Article I, Division 4 - Environmental Use Agreements;
 - b. Article II - Air Quality;
 - c. Article III - Stormwater;
 - d. Article IV - Groundwater and Surface Water Quality;
 - e. Article IX – Fill Material; and
 - f. Article X – Grading Permit.

SECTION 2.

Chapter 12.5, “Environmental Protection and Compliance,” Article X “Grading Permit” of the Code of the City of Fort Worth, (2015), as amended, is hereby repealed and restated in its entirety to be read as follows:

ARTICLE X: GRADING PERMIT

§ 12.5-874 DEFINITIONS.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

CAPITAL INFRASTRUCTURE PROJECT (CIP). Public infrastructure design and construction that is funded and managed by the City of Fort Worth.

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

DRAINAGE STUDY. A drainage study performed in accordance with the Stormwater Criteria Manual.

HUD. The United States Department of Housing and Urban Development.

LAND DISTURBANCE or **DISTURBANCE OF LAND**. Any construction or other activity caused by a person, which disturbs the surface of the land, including, but not limited to, clearing, grubbing, grading, excavations, embankments, development, demolition activities, the moving, depositing, stockpiling, staging or storing of fill material, soil, rock or earth materials, regardless of whether the activity is related to a public or private infrastructure project.

SINGLE-FAMILY RESIDENTIAL INFRASTRUCTURE PROJECT (SRIP). Public infrastructure design and construction for a single-family residential development project in the City of Fort Worth that will submit construction plans to the City's Infrastructure Plan Review Center.

STORMWATER CRITERIA MANUAL. The current edition of the *Fort Worth Stormwater Criteria Manual*, and all subsequent revisions and amendments thereto.

§ 12.5-875 INCORPORATION OF STORMWATER CRITERIA MANUAL

The Stormwater Criteria Manual is incorporated herein by reference and made a part of this Article for all purposes.

§ 12.5-876 CONSTRUCTION OF SINGLE-FAMILY AND DUPLEX HOMES.

- (a) An applicant for a detached single-family or duplex building permit shall submit the grading pattern of the land to be disturbed to the City at the time of building permit application.
- (b) The applicant shall identify one of the following grading patterns:
 - (1) HUD Type A grading-all drainage to the front;
 - (2) HUD Type B grading-drainage to the front and rear; or
 - (3) HUD Type C grading-all drainage to the rear.
- (c) The applicant shall affirm that the drainage pattern conforms with any approved subdivision grading plans. If the applicant cannot affirm that the proposed grading pattern of the land to be disturbed conforms to one of the HUD drainage patterns in this section and an approved subdivision grading plan, the Transportation and Public Works Department shall review the proposed lot grading prior to approval of the building permit.

§ 12.5-877 GRADING PERMIT REQUIRED; EXEMPTIONS FROM GRADING PERMIT REQUIREMENT.

- (a) Except as otherwise provided by this Article, no person may commence with the Disturbance of Land of 1.0 acre or more, or commence with the Disturbance of Land that

is part of a Common Plan of Development, unless a grading permit has been approved by the City for the Land Disturbance.

- (b) A grading permit shall not be required for the following:
 - (1) Construction of detached single-family or duplex homes that will disturb less than 1.0 acre and are not a part of a Common Plan of Development;
 - (2) Disturbance of Land activities that consist of only agricultural plowing or tilling, timber harvesting activities, road maintenance activities, routine channel maintenance or utility maintenance;
 - (3) A CIP that disturbs one acre or more, or is part of a Common Plan of Development if the CIP complies with the review and approval process defined by the City Engineer for a CIP and is reviewed and approved by the Environmental Services Department, the Urban Forestry and Gas Well Sections of the Development Services Department, the Water Department, the Park and Recreation Department, and the Transportation and Public Works Department; or
 - (4) A SRIP that disturbs one acre or more, or is part of a Common Plan of Development if the SRIP complies with the review and approval process defined by the Infrastructure Plan Review Center for a SRIP and is reviewed and approved by the Environmental Services Department, the Urban Forestry and Gas Well Sections of the Development Services Department, the Water Department, the Park and Recreation Department, and the Transportation and Public Works Department.
- (c) A person commits an offense if the person is required to obtain a grading permit and causes a Disturbance of Land without a grading permit that is approved by the City. A person commits an offense if the person is required to obtain a grading permit and allows a Disturbance of Land to remain without a grading permit that is approved by the City.

§ 12.5-878 APPLICATION FOR A GRADING PERMIT; APPROVAL.

- (a) Applications for a grading permit shall be submitted to the Development Services Department. The approval of any grading permit by the City shall require the consent of the Environmental Quality Division of the Code Compliance Department, the Urban Forestry and Gas Well Sections of the Development Services Department, the Water Department, the Park and Recreation Department, and the Transportation and Public Works Department.
- (b) Submission of Grading and Drainage Plans. An applicant for a grading permit must submit grading and drainage plans prepared by a professional engineer with the permit application. The grading permit application shall require an approved Drainage Study. Grading and drainage plans must conform to the approved Drainage Study. The Transportation and Public Works Director or his or her designee shall review these documents for conformance with stormwater design policies contained in the Stormwater Criteria Manual.

- (c) Submission of Stormwater Pollution Prevention Plan (SWPPP). An applicant for a grading permit must submit a SWPPP prepared by the applicant with the grading permit application. The grading permit application shall require an approved SWPPP. The SWPPP must comply with the Texas Commission on Environmental Quality (TCEQ) Stormwater Construction General Permit. The Environmental Management section of the City's Code Compliance Department shall review SWPPP for conformance with the current State Construction General Permit as required under the City's Municipal Separate Storm Sewer System (MS4) permit issued by TCEQ.

§ 12.5-879 EARLY GRADING PERMITS.

- (a) The City may issue an early grading permit for a Land Disturbance that involves only earthwork, prior to the issuance of a grading permit in accordance with the Stormwater Criteria Manual. An SRIP may obtain an early grading permit.
- (b) An applicant who has obtained an early grading permit must obtain a grading permit for any Land Disturbance beyond earthwork.
- (c) A person commits an offense if the person has been issued an early grading permit and performs, or allows to be performed, Land Disturbance activity that consists of more than earthwork.

§ 12.5-880 ADDITIONAL GRADING REQUIREMENTS.

- (a) All grading activities performed pursuant to a grading permit or early grading permit must conform to all applicable city, state, and federal policies including, but not limited to the City's stormwater management, floodplain management, urban forestry, water department, and stormwater pollution prevention policies.
- (b) All fill material placed in existing or proposed right-of-way pursuant to a grading permit or early grading permit must conform to the requirements of the City's standard specifications for street and storm drain construction. If testing and certification of fill material is not performed in conjunction with City infrastructure inspection, the City may require testing and certification by an independent soils laboratory, removal of the fill material at the expense of the applicant or property owner, or both.
- (c) The placement of fill material pursuant to a grading permit or early grading permit shall comply with Chapter 12.5, Article IX of the City Code.
- (d) The removal of trees pursuant to a grading permit or early grading permit shall comply with section 6.302 of the Zoning Ordinance.
- (e) A person commits an offense if the person fails to grade property in conformance with the construction plans approved by the City or in conformance with the grading permit issued by the City.

§ 12.5-881 GRADING CERTIFICATE.

- (a) A grading certificate certifying that all grading and related stormwater infrastructure construction was completed in compliance with this Article, the grading permit, and the early grading permit if applicable, must be prepared by the land owner or owner's representative and submitted to the Development Services Department prior to the issuance of a certificate of occupancy for any building permit involving a Disturbance of Land of 1.0 acre or more, or that is part of a Common Plan of Development for which the City issues certificates of occupancy.
- (b) A person commits an offense if a person fails to submit the Grading Certificate upon completion of all grading and related stormwater infrastructure construction in compliance with this Article.

§ 12.5-882 PERMIT FEES.

- (a) For all Land Disturbance involving 1.0 acre or more, or that is part of a Common Plan of Development, for which an early grading permit or grading permit is required, a permit fee, as established by the City Council, shall be assessed to the applicant.
- (b) No fees will be charged for review of information concerning grading patterns for detached single-family or duplex residences pursuant to § 12.5-876.

§ 12.5-883 VIOLATIONS.

- (a) A violation of any provision of this article is a Class C misdemeanor punishable by a fine not to exceed \$2,000.00. Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.
- (b) The issuance of a citation shall not limit the City's ability to pursue civil remedies or take other actions as set forth in chapter 12.5, Article I, Division 3 of the City Code.

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 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 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 provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation exists 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, 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 7.

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

SECTION 8.

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

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Richard A. McCracken
Assistant City Attorney

Jannette Goodall
City Secretary

ADOPTED: _____

EFFECTIVE: _____