

AN ORDINANCE AMENDING ARTICLES 19-2, 19-5, 19-7, 19-8, 19-10, 19-12, 19-13, AND 19-16 OF THE ZONING ORDINANCE AND ARTICLES 1-14, 6-7, AND 6-11 OF THE LAND SUBDIVISION REGULATIONS TO REFLECT REVISIONS TO THE STORMWATER MANUAL ADOPTED BY THE URBAN COUNTY GOVERNMENT. (PLANNING COMMISSION).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Articles 19-2, 19-5, 19-7, 19-8, 19-10, 19-12, 19-13, and 19-16 of the Zoning Ordinance and Articles 1-14, 6-7, and 6-11 of the Land Subdivision Regulations, which would amend the Zoning Ordinance and Land Subdivision Regulations to reflect revisions to the Stormwater Manual adopted by the Urban County Government; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on October 13, 2016; and

WHEREAS, the Planning Commission did recommend APPROVAL of the text amendment by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 19-2 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to delete the definitions for “Lowest Opening” and “Post-Development Floodplain” and to amend the following definitions to read as follows:

19-2 DEFINITIONS – Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

FLOODPLAIN - That land, adjacent to a stream, channel, or a body of water, which has been or may be hereafter covered by flood water during the regulatory flood. Floodplain shall include those lands which are included in the special flood hazard areas.

REGULATORY FLOOD – A flood of a magnitude having a one percent (1%) chance of occurring in any given year and which, over a long period of time, can be expected to be equaled or exceeded, on the average, once every 100 years. The limits of the regulatory flood for a site shall be determined by reference to the elevations shown on the Federal Emergency Management Agency Flood Insurance Rate Maps and Flood Boundary and Floodway Maps, where such data is available. Base flood shall be synonymous with regulatory flood.

REGULATORY FLOOD PROTECTION ELEVATION – The elevation of the lowest floor of a structure which shall be two (2) feet or more above the water-surface elevation of the regulatory flood.

STREAM – Any river, creek, or channel that is defined as a stream by KRS 151.100.

Section 2 – That Article 19-5 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

19-5 LANDS TO WHICH THIS ARTICLE APPLIES – This Article shall apply to all lands within the jurisdiction of the Lexington-Fayette Urban County Government which meet the following:

- (a) Special Flood Hazard Areas as defined herein.
- (b) Areas of Alluvial Soils as regulated in 19-13 herein.
- (c) Areas adjoining or adjacent to the floodplain that are Vegetative Buffer Zones or Floodplain Setback Areas.

Section 3 – That Article 19-7 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to read as follows:

19-7 STANDARDS APPLICABLE TO ALL SPECIAL FLOOD HAZARD AREAS – Unless otherwise specified, the following standards are applicable in all special flood hazard areas:

19-7(a) PROHIBITED USES – The following uses shall be prohibited in special flood hazard areas unless granted through a special permit or as a floodplain variance:

- (1) Excavating, grading or filling which disturbs the natural grade of the floodplain. Failure to comply with this prohibition shall constitute a violation of this Zoning Ordinance subject to a civil citation, fine and/or abatement, as provided in Article 5.
- (2) Principal or accessory buildings, including but not limited to, manufactured buildings for residential, business, office, or industrial use.

19-7(c) LOTS IN A SPECIAL FLOOD HAZARD AREA – Where a new structure is proposed on an existing lot that includes a regulatory flood area, and no regulatory flood protection elevation is shown on the final record plan for the lot, the lowest floor of the structure shall be at or above

the regulatory flood protection elevation as determined through reference to the Federal Insurance Administration report, "The Flood Insurance Study for Lexington-Fayette Urban County Government, Kentucky." Where a substantial improvement of an existing structure is proposed on a lot that includes a regulatory flood area, and no regulatory flood protection elevation is shown on the final record plan for the lot, the lowest floor of the structure shall be at or above the regulatory flood protection elevation as determined through reference to the Flood Insurance Administration report, "The Flood Insurance Study for Lexington-Fayette Urban County Government, Kentucky." Where a new structure or substantial improvement of an existing structure is proposed within a special flood hazard area, and neither the final record plan nor the Flood Insurance Study specifies a regulatory flood elevation for the stream, a licensed professional engineer shall determine the regulatory flood elevation, or the applicant may request assistance from the Kentucky Division of Water.

19-7(d) LOTS WITH A REGULATORY FLOOD PROTECTION ELEVATION – Where a new structure or substantial improvement of an existing structure is proposed on a lot which has a regulatory flood protection elevation noted on the final record plan of the property, the lowest floor shall be at or above the noted elevation.

19-7(g) GENERAL STANDARDS FOR MAJOR SUBDIVISION PLANS AND DEVELOPMENT PLAN PROPOSALS – All stormwater facilities shall be designed and constructed in conformance with the requirements of the Division of Engineering Stormwater Manual. All major subdivision plans and final development plans shall, at a minimum, be subject to the following requirements. Failure to comply with these standards during construction or with requirements established by these standards during or after construction shall be a violation of this Zoning Ordinance, subject to a civil citation, fine and/or abatement, as provided in Article 5.

19-7(g)(1) PRELIMINARY SUBDIVISION AND PRELIMINARY DEVELOPMENT PLAN REQUIREMENTS – In order to protect the floodplain during infrastructure construction, a preliminary subdivision plan and/or a preliminary development plan shall indicate the location of a Vegetative Buffer Zone. The Vegetative Buffer Zone shall be 50 feet, measured horizontally from the centerline, on each side of intermittent streams and 50 feet, measured horizontally from the edge of the bank, on each side of perennial streams. The 50-foot criterion for the width of the vegetative buffer zone may be established on an average width basis at a project, as long as the minimum width of the buffer zone is 25 feet or more at any measured location. The boundary of the Vegetative Buffer Zone may be located inside or outside the horizontal limits of the floodplain. Within the Vegetative Buffer Zone, there shall be no grading, filling, trenching, soil compaction, removal of vegetation, or other disturbance of the soil or ground cover (including parallel utilities), or the storage of equipment or materials during the construction of the infrastructure.

19-7(g)(2) FLOODPLAIN ANALYSIS – A floodplain analysis shall be conducted when required by the Stormwater Manual. Such analysis shall not be required for the subdivision of property in a residential or agricultural zone for which no infrastructure improvements are proposed; however, the Planning Commission may require a floodplain analysis for such a subdivision in locations of known flooding.

19-7(g)(3) REVISION OF THE SPECIAL FLOOD HAZARD AREA – If the watershed study determines that the proposed development will cause the floodplain to be different than the Special Flood Hazard Area depicted on the Digital Flood Insurance Rate Maps, the project engineer shall prepare

and submit the appropriate Letter of Map Change (which may include C-LOMR, LOMR, LOMA, LOMR-F, or other appropriate filing) to FEMA.

19-7(g)(4) FINAL RECORD PLAN AND FINAL DEVELOPMENT PLAN REQUIREMENTS – Final record plans and final development plans that include or adjoin a special flood hazard area shall include and show the floodplain boundaries. Regulatory flood elevations (in relation to mean sea level) shall be noted.

- (a) REGULATORY FLOOD PROTECTION ELEVATION – The final record plan shall show the Regulatory Flood Protection Elevation (RFPE) for each lot that includes or is adjacent to a floodplain, and the final development plan shall show the RFPE for each such building.
- (b) MINIMUM SETBACK – All lots which contain or adjoin a floodplain shall have a minimum building setback from the floodplain of twenty-five (25) feet depicted on the final record plan and on the final development plan. This building setback shall be measured horizontally from the edge of the floodplain and shall be applicable to all principal and accessory buildings on the lot.
- (c) VEGETATIVE BUFFER ZONE – In order to protect the stream from inappropriate activities, there shall be a vegetative buffer zone of 50 feet, measured horizontally from the centerline, on each side of intermittent streams and 50 feet, measured horizontally from the edge of the bank, on each side of perennial streams. The 50-foot criterion for the width of the vegetative buffer zone may be established on an average width basis at a project, as long as the minimum width of the vegetative buffer zone is 25 feet or more at any measured location. The vegetative buffer zone may coincide with greenways or the setback required above. Within the vegetative buffer zone, there shall be no grading, filling, trenching, soil compaction, removal of vegetation, or other disturbance of the soil or ground cover, or construction of principal or accessory buildings.

19-7(g)(5) SUBDIVISION AND DEVELOPMENT PLAN REVIEW STANDARDS – All subdivision and development plans shall be consistent with the need to minimize flood damage and shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage to it and to other uses. The following public facilities shall be permitted in the floodplain:

- (a) Temporary sediment ponds that will be converted to permanent stormwater management ponds, provided they are located outside the horizontal limits of the vegetative buffer zone.
- (b) Roadways and utilities that cross at angles within 10 degrees of being perpendicular to the water or to the floodplain.
- (c) Sanitary sewers, which shall be constructed outside the horizontal limits of the 10-year floodplain, with manhole covers set at an elevation one (1) foot above the elevation of the regulatory flood.
- (d) Storm sewer pipe outlets where the outlet terminates at the edge of the floodplain.

Section 4 – That Article 19-8 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government be and hereby is amended, in part, to read as follows:

19-8 SPECIAL PERMIT USES – Special permit uses in the floodplain may be permitted only where existing streets or utilities are at elevations which make construction outside the horizontal limits of the floodplain impractical, or in other special circumstances. Structures shall ordinarily be located outside the horizontal limits of the floodplain and at least two feet above the elevation of the regulatory flood, but may be allowed as a special permit use, to be elevated or flood-proofed to a point above the regulatory flood protection elevation. Such structures shall be limited to those that will not be subject to substantial flood damage and which will not substantially affect the capacity of any stream or increase the regulatory flood elevation. All special permit uses shall be located outside the horizontal limits of the vegetative buffer zone, and no structure shall be permitted as a special permit use within the floodway. A licensed professional engineer shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the requirements herein. Such certification, including the specific elevation (in relation to mean sea level) to which such structure is elevated or flood-proofed, shall be provided to the Division of Engineering as a part of the application for the special permit. Failure to comply with the standards for a special permit or with any conditions attached to the special permit shall be a violation subject to a civil citation, fine and/or abatement, as provided in Article 5.

19-8(c) NEW STRUCTURES ON FILL – New construction or substantial improvement of an existing structure on fill shall be permitted as a special permit use, provided the lowest floor is at or above the regulatory flood protection elevation. Such fill shall be at least one (1) foot above the regulatory flood elevation for the particular area and shall extend at that same elevation towards the stream channel for a distance of at least fifteen (15) feet beyond the limits of the structure thereon. However, no use shall be constructed which adversely affects the capacity of streams or floodplains of any main stream or tributary to the main stream, drainage ditch, or any other drainage facility or system, or will increase the regulatory flood elevation.

Section 5 – That subsections 19-10(a) and (b) of Article 19 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby are amended to read as follows:

19-10(a) MEMBERSHIP – The Floodplain Appeals Committee shall consist of five members to be appointed by action of the Planning Commission. One member shall be the Commissioner of Planning, Preservation, and Development or the Commissioner’s designee, one member shall be a member of the Planning Commission, one member shall be a member of the Urban County Council, one member shall be a professional engineer licensed in Kentucky and in private practice, and one member shall be a member of the Home Builder’s Association of Lexington. The term of the Planning Commission member shall be the same as the member’s Planning Commission appointment, and the term of the Council member shall be the same as the Council member’s term. For the others, the initial appointment for one member shall be for four years, one for three years and one for two years. Subsequent appointments shall be for four years.

19-10(b) COMMISSIONER OF PLANNING, PRESERVATION, AND

DEVELOPMENT'S REVIEW – All appeals from the decision of the Urban County Engineer shall be reviewed by the Commissioner of Planning, Preservation, and Development prior to filing with the Floodplain Appeals Committee. The Commissioner of Planning, Preservation, and Development may solicit additional technical or legal advice to assist in the review. The Commissioner of Planning, Preservation, and Development shall not be empowered to override the decision of the Urban County Engineer for reconsideration if the Commissioner's review uncovers new facts or information not considered in the original decision of the Urban County Engineer. However, if so desired, the appellant may file directly with the Floodplain Appeals Committee after the Commissioner has made the review. The Commissioner of Planning, Preservation, and Development shall document the review and recommendations in writing, and both the Commissioner's report and the report of the Urban County Engineer shall be required to be filed with any application to the Floodplain Appeals Committee appealing the Urban County Engineer's decision.

Section 6 – That Article 19-12 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government be and hereby is amended, in part, to read as follows:

19-12 COMMISSIONER OF PLANNING, PRESERVATION, AND DEVELOPMENT'S RESPONSIBILITIES – In addition to the responsibilities outlined above, the Commissioner of Planning, Preservation, and Development or authorized designee(s) shall have the responsibility to:

(c) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new structures and all additions to existing structures situated within a flood hazard area, where the base flood elevation is determined by means other than as a special flood hazard area.

(e) When base flood elevation data have not been provided, then the Commissioner of Planning, Preservation, and Development shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer the provisions of this Article.

Section 7 – That Article 19-13 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government be and hereby is amended to read as follows:

19-13 AREAS OF ALLUVIAL SOILS - When a building permit for new construction or substantial improvement to an existing structure is requested for a site where alluvial soils are found, and the site is not located in a Special Flood Hazard Area, and where detailed hydrologic and hydraulic calculations have not been performed in conjunction with the development, the Division of Building Inspection shall refer the request to the Division of Engineering for review. These alluvial soils are identified in the Soil Survey, Fayette County, Kentucky, U.S. Department of Agriculture, Soil Conservation Service, 1968 and most specifically are as follows: Armour Silt Loam (ArA), when adjacent to a stream or other alluvial soil; Armour Silt Loam (ArB and ArC) when along the Kentucky

River; Captina Silt Loam (CaA), Captina Silt Loam (CaB), Egam Silt Loam (Ea), Egam Silt Loam (Ec), Huntington Silt Loam (Hu), Lanton Silt Loam (La), Lawrence Silt Loam (Lc), Linside Silt Loam (Ld), Melvin Silt Loam (Mt), and Newark Silt Loam (Ne). In its review, the Division of Engineering may require the elevation of the lowest floor of the structure to be not less than two (2) feet above the nearest regulatory flood elevation for the stream (as shown on the FEMA Maps), or not less than two (2) feet above any calculated or known high water level that the Division of Engineering has on file for the watershed; or may require the submission of information prepared by a licensed professional engineer that the elevation is at least two (2) feet above the elevation of the regulatory flood and will not obstruct the floodplain or create adverse flooding conditions on adjacent properties. In addition, the Division of Building Inspection shall require the submission of a foundation and footer detail prepared by the private professional engineer prior to the issuance of the building permit. Appeals of the elevation requirements of the Division of Engineering shall be referred to the Floodplain Appeals Committee and shall follow the review procedure therein.

Section 8 – That Article 19-16 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

19-16 ENFORCEMENT – The provisions of special use permits shall be enforced by the Divisions of Engineering and Building Inspection. Generally, the Division of Engineering shall determine compliance with elevation requirements and drainage features, and the Division of Building Inspection shall enforce structural requirements where flood-proofing of the structure is required. Minimum floor elevations shall be enforced through an elevation certificate, prepared by a registered land surveyor or a professional engineer, and submitted to the Division of Building Inspection after the elevation of the lowest floor is established and before any further work on the structure proceeds.

Section 9 – That Article 1-14 of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to read as follows:

1-14 DEFINITION OF WORDS – Throughout these Subdivision Regulations, all words in the present tense include future tense, and all words in the plural number include the singular number or vice-versa, unless the natural construction of the wording indicates otherwise. The word "may" is permissive, while the words "shall" and "will" are mandatory. The following words and phrases, when used in these regulations, shall be defined and interpreted as follows:

GREEN INFRASTRUCTURE – Infrastructure and stormwater control design approaches and technologies that mimic the natural hydrologic cycle processes of rainfall infiltration, evapotranspiration and reuse.

LOW IMPACT DEVELOPMENT – A stormwater management design approach for commercial and residential developments that has a goal of

achieving a hydrologically functioning development that approaches pre-development natural site conditions, using green infrastructure and other design features in lieu of large scale stormwater collection and conveyance structures.

STORMWATER BEST MANAGEMENT PRACTICES – Those practices used to manage stormwater runoff, both quality or quantity, and may include, but is not limited to, green infrastructure, manufactured treatment devices, detention basins, extended detention basins, wet ponds, underground detention, and constructed wetlands.

Section 10 – That Article 6-7 of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to read as follows:

6-7 STORMWATER DISPOSAL STANDARDS - Every subdivision shall provide satisfactory drainage of stormwater by means of underground sewer pipes and/or constructed channels, provided that such stormwater drainage system conforms to the requirements of this Article, the Division of Engineering Stormwater Manual and Standard Drawings, and the Lexington-Fayette County Health Department. Failure to comply with the requirements of Stormwater Disposal Standards during construction, or to properly maintain the easements and/or facilities required by these standards during or after construction, shall be a violation subject to a civil citation, as provided in Article 1 of these Subdivision Regulations.

6-7(c) STORMWATER BEST MANAGEMENT PRACTICES – Where required by the Stormwater Manual, stormwater best management practices shall be provided by the developer.

6-7(c)(1) SINGLE FAMILY, TWO-FAMILY, AND CERTAIN MULTI-FAMILY RESIDENTIAL AREAS – In single-family and two-family residential areas, when detention basins, extended detention basins, wet ponds, and constructed wetlands are used for stormwater management, they shall be dedicated to the Lexington-Fayette Urban County Government and shall be located on separate lots with adequate access for maintenance. In multi-family developments, such facilities shall be dedicated to the Lexington-Fayette Urban County Government when each multi-family structure is proposed to be located on a separate lot with access to a public street.

6-7(c)(2) OTHER RESIDENTIAL, OFFICE, BUSINESS AND INDUSTRIAL AREAS – In all other multi-family residential, business, office and industrial areas, all stormwater best management practices shall be owned and maintained by the property owner. No stormwater best management practices shall be subdivided so as to be a part of more than one lot, and all shall be connected to an adjoining buildable lot.

6-7(d) STORM DRAINAGE EASEMENTS – Easements for stormwater drainage systems and access to stormwater best management practices shall be shown on the final record plan. Special notes relating to the maintenance of such easements may be required by the Planning Commission on the final subdivision plan. Drainage easements may be combined with utility and other easements if sufficient widths are provided.

However, no drainage easement containing underground storm sewers may be combined with a utility easement containing underground electric or natural gas lines, except for necessary crossing points, unless sufficient clearance between the facilities is provided and documented. Release or modification of storm drainage easements shall require the expressed approval of the Urban County Council. Encroachments, construction of drainage improvements and facilities shall be at the approval of the Commissioner of Public Works or the Commissioner's authorized agent.

6-7(e) CONSTRUCTED CHANNELS – When surface drainage of one acre or greater is proposed, a constructed channel shall be used. Such channels shall be designed in conformance with the Division of Engineering Stormwater Manual to contain the 100-year storm within the channel.

6-7(f) SOIL EROSION CONTROLS – Control of erosion and sedimentation for subdivisions shall be as required under Chapter 16 of the Code of Ordinances and the provisions of the Division of Engineering Stormwater Manual.

Section 11 – That Article 6-11(a)(3) of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

6-11(a)(3) FLOODPLAIN AREAS EXCEPTED – Floodplain areas along streams that have Special Flood Hazard Areas or where detailed hydrologic and hydraulic calculations have been done to calculate the floodplain shall not be required to be contained in reports required above for environmentally sensitive areas, except to the extent they impact or are impacted by another environmentally sensitive area. Restrictions for floodplain areas shall be as required by Article 19 of the Zoning Ordinance and the Stormwater Manual.

Section 12 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

URBAN COUNTY COUNCIL CLERK

PUBLISHED:

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