

ORDINANCE NO. 157, SERIES 2017

AN ORDINANCE AMENDING THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES CHAPTER 157 RELATING TO THE FLOODPLAIN REGULATIONS (AMENDED BY SUBSTITUTION).

SPONSORED BY: COUNCIL MEMBERS LEET AND JOHNSON

WHEREAS, The Legislative Council of the Louisville/Jefferson County Metro Government (“Council”) acknowledges that flood protection is a high priority in the community which has several flood prone areas;

WHEREAS, Louisville Metro currently has over 12,500 structures located within flood prone areas, of which only slightly over 5,000 have insurance policies through the Federal Emergency Management Agency (“FEMA”);

WHEREAS, major flooding following a record rainfall event on April 2nd and 3rd, 2015, coupled with an abnormally high frequency of heavy rain events over the past six years, left some property owners unable to repair their homes due to the 50% limitation over a ten-year period;

WHEREAS, as a result of the aforementioned situation, the Council temporarily amended Chapter 157 of the Louisville Metro Code of Ordinances (“LMCO”) (the “Floodplain Management Ordinance”) for a six-month period to provide that repairs to damage to structures in the floodplain shall be calculated on a per-incident basis rather than over a ten-year period as previously required;

WHEREAS, subsequent to the flooding event in April, a workgroup was created to identify potential short-term solutions for affected property owners and deliver recommendations to the Mayor, Council and MSD Board within 30 days;

WHEREAS, the workgroup was also charged with evaluating long-term solutions to mitigate damage to homes in Jefferson County located in the floodplain, and

WHEREAS, the workgroup has also been coordinating with the Greater Louisville Association of Realtors to improve property owner disclosure requirements to ensure that potential purchasers will receive adequate notice and information regarding properties that are either located within the floodplain or otherwise subject to flooding;

WHEREAS, the provisions of this Ordinance apply to properties located within the delineated boundaries of the local regulatory floodplain as depicted on the Louisville/Jefferson County Information Consortium (“LOJIC”) Geographical Information System (“GIS”) map as a matter of public record, and not to properties subject to flooding either by event or their location in proximity to said floodplain;

WHEREAS, the LOJIC GIS map is available online at www.lojic.org.

WHEREAS, amendments to the current Floodplain Management Ordinance are necessary to strengthen protection while ensuring responsible development in flood prone areas of Metro Louisville; and

WHEREAS, the amended Floodplain Management Ordinance will better provide development guidance in such a way as to ensure compliance with federal guidelines and the flood insurance program.

NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: The definitions contained in LMCO 157.02 LMCO are hereby amended as follows:

FREEBOARD. A factor of safety, which is at least ~~one~~ two feet feet for residential structures and one foot for non-residential structures above the local regulatory base flood elevations, which is applied for the purposes of floodplain

management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

(a) Freeboard must be applied not just to the elevations of the lowest floor or floodproofing level, but also to the level of protection provided to all components of the building, such as building utilities, HVAC components, etc.

(b) All building utilities, including ductwork, must be elevated or protected to ~~the~~ two-foot freeboard level and all portions of the building below the freeboard level must be constructed using materials resistant to flood damage and must meet the opening requirements for enclosures.

LOCAL REGULATORY CONVEYANCE ZONE. The channel of a river or ~~solid blue line perennial stream or intermittent stream~~ and the land adjacent to that river or stream which if unobstructed will discharge a local regulatory flood without cumulatively increasing the water surface elevation more than one-tenth of one foot. The conveyance zone is determined by an equal loss of conveyance (at higher elevation) occurring on each side of the channel.

RESIDENTIAL STRUCTURE. A non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, 2-4 family, or other residential building, including without limitation, houses, condominiums and apartments.

SECTION 1316. The section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the administering agency finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in ~~flood-prone areas~~ local regulatory floodplain.

SOLID BLUE LINE STREAM. ~~A stream defined and designated as such on 7.5 minute quadrangle topographic maps published by the U.S. Geologic Survey (USGS).~~

STREAM, PERENNIAL. A stream that has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water from stream flow. Runoff from rainfall is a supplemental source of water stream flow. All streams designated with a solid blue line on the U.S.G.S. 7.5 minute quadrangle topographic maps are considered to be perennial, but may be determined in whole or part to be intermittent based on information provided by a qualified professional, the Kentucky Division of Water or the U.S. Army Corps of Engineers. Additional perennial stream determinations shall be made on a case-by-case basis by a qualified professional with a background in stream hydrology and/or wetland biology. Information concerning an additional designation shall be solicited from the Kentucky Division of Water and the U. S. Army Corps of Engineers.

STREAM, INTERMITTENT. A stream or part of a stream that has flowing water during certain times of the year when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water stream flow. All streams designated with a broken blue line on the U.S.G.S. 7.5 minute quadrangle topographic maps are considered to be intermittent, but may be determined in whole or part to be perennial or ephemeral based on information provided by a qualified professional, the Kentucky Division of Water or the U.S. Army Corps of Engineers. Additional intermittent stream determinations shall be made on a case-by-case basis by a qualified professional with a background in stream hydrology and/or wetland biology. Information concerning an additional designation shall be solicited from the Kentucky Division of Water and the U. S. Army Corps of Engineers.

SUBDIVISION. Division of a parcel of land into two or more lots or parcels, for the purpose, whether immediate or future, of sale, lease, or building development; or if a new street is involved, any division of a parcel of land. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided. The following shall not be considered a subdivision:

(a) Consolidation of existing lots, parcels or tracts by deed or other recorded instrument; or

(b) Creation of an easement other than an access easement (e.g. utility easement, etc.); or

(c) A division of land into lots of five acres or larger for agricultural use and not involving a new street.

The term "subdivision" is further defined as follows:

(a) Major Subdivision – Any subdivision not defined as a minor subdivision.

(b) Minor Subdivision – A Subdivision of land into no more than five tracts or lots, provided that such subdivision does not involve the creation of any new public street. Further division of an approved minor subdivision (exceeding the total of five lots in any 12 month period) shall require the subdivider to proceed under the provisions governing major subdivisions.

SUBSTANTIAL IMPROVEMENT. Any combination of repairs, reconstruction, alteration, additions or improvements to existing development not related to damage taking place during a ~~ten~~one-year rolling period and ~~begun on or after January 1, 2006~~ in which the cumulative cost equals or exceeds 50% of the market value of the structure, excluding periodic maintenance and upkeep (including without limitation, windows, doors and roofing) that does not increase the value of the structure. (See definition for *Market Value*.) With regard to damage, Substantial Improvement shall mean any combination of repairs, reconstruction, rehabilitation or improvement to existing development taking place during a one-year rolling period in which the cumulative cost equals or exceeds 50% of the market value of the structure. The cost of repairs, reconstruction, alteration, additions or improvements shall reflect the value in the marketplace of the labor and materials to be used. The first alteration of any wall,

ceiling, floor or other structural part of the structure constitutes beginning of construction of the substantial improvement whether or not that alteration affects the external dimensions of the structure ~~constitutes beginning of construction of the substantial improvement~~. The term does not include the cost of flood proofing or elevating a structure or any portion thereof to the freeboard elevation.

This term does not apply to:

(a) Any project for improvement of a building required to comply with existing health, safety or sanitary code requirements which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or

(b) Any alteration of a "historic structure" as defined in this Ordinance, provided that the alteration will not preclude the structure's continued designation as a "historic structure" and provided that mitigation measures to minimize future flood damages are used to the maximum extent practicable when historic structures are renovated or when repaired following a flood or other hazard event.

SECTION II: LMCO 157.03(B) is amended as follows:

Streams. For "solid blue line streams." For "perennial stream" and "intermittent streams".

(1) Notwithstanding anything in this §157.03 to the contrary, no relocation, channelization, or stripping of the stream, stream banks, or channel shall occur except for ~~public projects benefitting the general public~~ such as road crossings, installation of utilities, flood control measures, drainage and outfall pipes, detention basins, retention basins or water impoundments and for projects with benefit to the public in preventing flooding provided such projects are essential to protect the health, safety, and welfare of local residents, ~~Such projects must be~~ the only alternative which is viable, and all exceptions ~~must be~~ approved by the administering agency, the Louisville Metro Planning Commission, the Kentucky Division of Water, and if applicable, the U.S. Army Corps of Engineers.

(2) A natural vegetation buffer strip shall be preserved at least 25 feet on each side of the stream bank ~~as defined by the hydraulic model of the channel~~ from the top of the bank. In areas not already disturbed by urban, suburban, or agricultural land uses prior to the effective date of this chapter, existing natural vegetation over story and under story trees shall be preserved and shrubs and ground covers shall be maintained along the stream bank sufficient to naturally maintain the integrity of the channel.

(3) When removal of vegetation within the buffer strip specified in subsection (B)(2) above is necessary for the location and construction of a public project or project with benefit to the public in preventing flooding described in subsection (B)(1) above, native vegetation which thrives in riparian environments shall be replanted prior to completion of construction sufficient to naturally maintain the integrity of the channel.

(4) Stream crossings for existing lots or tracts may be permitted where there is no alternative for access to the property.

SECTION III: LMCO 157.03(C)(1) repeals the term “flood-prone areas” and replaces with “local regulatory floodplain” to read as follows:

(1) Floodplain Permit. No person shall begin development in the local regulatory floodplain unless and until a floodplain permit has been issued by the administering agency.

(a) The administering agency shall review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a ~~flood-prone area~~ local regulatory floodplain, any such proposals shall be reviewed to assure that:

1. All such proposals are consistent with the need to minimize flood damage within the ~~flood-prone area~~ local regulatory floodplain;
2. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
3. Adequate drainage is provided to reduce exposure to flood hazards;
4. New and replacement water supply systems are designed to minimize or eliminate infiltration of flood waters into the systems;
5. New and replacement sanitary sewage systems are designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
6. Onsite waste disposal systems are located to avoid impairment to them or contamination from them during flooding.

SECTION IV: LMCO 157.03(C)(2)(a)2 is reorganized as follows:

2. Consisting of existing development other than substantial improvement or repair of substantial damage which:

ea. Floodproofs any addition or elevates it to at least freeboard elevation-
and either,

ab. Replaces or repairs the pre-existing condition of development or constructs additions or remodeling which do not constitute substantial improvement or repair of substantial damage without diminishing the storage capacity or the amount and velocity of the transmission of flood waters through the local regulatory floodplain from what was present prior to the replacement or repair, or

bc. Floodproofs the existing development below freeboard elevations so that those areas including all mechanical and utility equipment and ductwork below the

required elevation are watertight with walls substantially impermeable to the passage of water and structural components are used which have the capability to resist hydrostatic and hydrodynamic loads and the effects of buoyancy which capabilities shall be certified by a licensed professional engineer or architect and provided to the administering agency, and

SECTION V: LMCO 157.03(C)(2)(a)(4) is amended as follows:

All new public or private roads must be constructed at or above the local regulatory base flood elevation. ~~On any lot created after the effective date of this chapter, no new construction shall occur unless access to the lot is available from a road which is at or above the local regulatory base flood elevation.~~

SECTION VI: LMCO 157.03(C)(2)(b)(3) is reorganized as follows:

3. Existing development not consisting of substantial improvement or repair of substantial damage which:

ea. Floodproofs any addition or elevates it to at least freeboard elevation, and either,

ab. Replaces or repairs the pre-existing condition of development without diminishing the storage capacity or the amount and velocity of the transmission of flood waters through the local regulatory floodplain from what was present prior to the replacement or repair, or

bc. Floodproofs the existing development as repaired or replaced in accordance with the standard provided in subsection (C)(2)(b)2. ~~above, and~~

SECTION VII: LMCO 157.03(C)(2)(c)(2) is reorganized as follows:

2. A critical facility not consisting of new construction or substantial improvement or repair of substantial damage which:

ea. Floodproofs any addition or elevates it to at least freeboard elevation, and either,

ab. Replaces or repairs the pre-existing condition of development without diminishing the storage capacity or the amount and velocity of the transmission of flood waters through the local regulatory floodplain from what was present prior to the replacement or repair, or

bc. Floodproofs the existing development as repaired or replaced in accordance with the standard provided in subsection (C)(2)(b)2. ~~, above, and~~

SECTION VIII: LMCO 157.03(C)(4)(b) is amended as follows:

For a floodplain permit issued under subsections (C)(2) or (C)(3), above, any development which displaces any storage capacity for floodwaters in the local regulatory floodplain shall provide floodplain storage compensation 1.5 times the

displaced storage capacity in the following watersheds: Beargrass Creek, Cedar Creek, Chenoweth Run, Goose Creek, Harrods Creek, Mill Creek, Ohio River, Pennsylvania Run, and Pond Creek. Floodplain storage compensation shall be provided 1.0 times the displaced storage capacity in the Floyds Fork watershed, with the exception of the Chenoweth Run watershed. In the Ohio River Corridor, a floodplain compensation fee in an amount established by the administering agency may be assessed and paid to the administering agency in lieu of floodplain storage compensation or compensation elsewhere may be provided if approved by the administering agency.

SECTION IX: LMCO 157.03(C)(4)(e) is amended as follows:

~~Except for police stations and fire stations, n~~No new construction of critical facilities shall occur in the local regulatory floodplain and no elevation shall be permitted for new construction of critical facilities ~~(except for police stations and fire stations)~~ to raise them to at least freeboard elevation.

SECTION X: LMCO 157.03(C)(7) is amended as follows:

Conformance with Floodplain Permit. No person who has obtained a floodplain permit shall construct development except in accordance with its terms. Upon completion of construction, the permittee shall provide a finished elevation certificate to MSD within 30 days of construction completion.

SECTION XI: LMCO 157.03(C)(9) is amended as follows:

Parking lots. An owner, lessor, manager, or lessee of a parking lot which is intended for public use, which resides in the local regulatory floodplain, shall erect a sign, in accordance with standards and appropriate language established by the administering agency, warning occupants that such parking lot is in a flood prone area. The maximum depth of flooding allowed in any new parking facility (except those devoted exclusively to tractor trailer parking) shall be 6 inches below the local regulatory base flood elevation for all areas except the Ohio River Corridor. Parking facilities in the Ohio River Corridor may be permitted due to longer warning times available.

SECTION XII: LMCO 157.03(C) adds two new subsections to read as follows:

(10) Any development that causes an increase or decrease to the base flood elevations shown on the effective FIRMS or Flood Insurance Study must apply for a Letter of Map Change (LOMC) from FEMA as soon as practicable, but not later than six months after the date of the Site Disturbance Permit release. Any such alterations must be reviewed and approved by FEMA through the LOMC process.

(11) Signage. For any new major residential subdivision that is not served by at least one access road which is at or above the local regulatory base flood elevation, signage shall be erected at the nearest floodplain location on the access roads to the new subdivision prior to record plat approval to warn residents that the road is flood prone.

Signage shall be in accordance with standards and appropriate language established by the administering agency. All installation costs of signage shall be borne by the developer of the proposed subdivision.

SECTION XIII: LMCO 157.04(A)(3), replaces the term “flood-prone areas” with “local regulatory floodplain” as follows:

Engage in a program of education to promote public awareness of the location of ~~flood-prone area~~ local regulatory floodplain, the risks of undertaking development in those areas without appropriate floodproofing and floodplain storage compensation measures, the availability and advantages of flood insurance, and protections which may be provided by floodproofing and floodplain storage compensation.

SECTION XIV: LMCO The title for Section 157.23 is amended as follows:
PERMIT FOR NONCONFORMING USE SPECIFICALLY PERMITTED USE.

SECTION XV: LMCO 157.24 is amended as follows:

The Floodplain Management Plan for Louisville and Jefferson County, dated December 2000, is hereby readopted. The most recently adopted Floodplain Management Plan for Louisville and Jefferson County shall be applicable for all purposes relating to this Chapter.


SECTION XVI: This Ordinance shall take effect on October 1, 2017, and shall not apply to detailed district development plans or subdivisions plans that have received preliminary MSD approval required for docketing for Louisville Metro Planning Commission review prior to the effective date, and which have received construction and building permits prior to October 1, 2020.



H. Stephen Ott
Metro Council Clerk



Greg Fischer
Mayor



David Yates
President of the Council

8/25/17
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: *Paul B. Mott*

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
August 24, 2017

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