

ORDINANCE NO. BL2010-709

An ordinance to amend Title 17 of the Metropolitan Code of Laws, the Zoning Ordinance of the Metropolitan Government of Nashville and Davidson County, to modify definitions and regulations pertaining to floodplain development and associated application reviews, all of which is more particularly described herein (Proposal No. 2010Z-013TX-001).

WHEREAS, an extensive rain event that began on May 1, 2010, caused widespread flooding throughout the area of the Metropolitan Government of Nashville and Davidson County; and

WHEREAS, the flooding resulted in substantial and tragic harm to citizens and catastrophic damage to their property; and

WHEREAS, the widespread flooding, included fast moving and deep water, throughout the area of the Metropolitan Government and created an emergency resulting in the Declaration of a State of Emergency by Mayor Karl Dean; and

WHEREAS, the President of the United States, President Barack Obama, declared Davidson County (FEMA 1909-DR) on May 4, 2010, along with 41 other counties in the State of Tennessee as major disaster areas, and thus, eligible for federal disaster aid programs managed by the Federal Emergency Management Agency (FEMA); and,

WHEREAS, the functions and values of floodplains and floodways to allow for the storage and conveyance of floodwater flows through existing and natural flood conveyance systems is necessary to reduce the risk of flooding, and to prevent or reduce risk to human life and property.

WHEREAS, the rebuilding and replacement of homes, educational facilities, businesses, and other structures will be costly and will create an economic hardship on citizens as they recover from this disaster; and,

WHEREAS, the Metropolitan Government of Nashville and Davidson County desires to reduce the probability of its citizens being impacted by flooding during future storm events;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Section 17.040.060 of the Metropolitan Code (Definitions of General Terms) is amended by **inserting** the following definitions in alphabetical order:

“Development (in the floodplain overlay district)” means any constructed change to improved or unimproved real estate, including but not limited to, buildings, structures, signs, fences, decks, porches, patios, parking areas, and all other structures and facilities, mining, dredging, filling, grading, paving, excavation, or driller operations, or storage of equipment or materials, including but not limited to, the use of any land or water; the size, shape, location, and placement of lots; the use, size, elevation, height, type, and location of structures on lots; the installation and maintenance of water supply, sewer

lines, and waste disposal facilities; the filling, cutting, grading, or dredging of any lands; the cutting of vegetation; and the subdivision of land; shall be in full compliance with the terms of this title and other applicable local, state, or federal regulations.

“Flood” means water from a river, stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands and which may affect other lands and activities through increased surface water levels and/or increased groundwater level.

“Flood-prone” means properties located in an area that will be inundated by water during a 100-year flood.

“Obstruction to Flow” means any development which blocks the conveyance of floodwater such that this development alone or together with any existing or future development will cause an increase in regional flood height.

“Official Floodplain Map” means the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), along with specific basin studies that have been approved by the director of the department of public works shall constitute the official floodplain map for the metropolitan government of Nashville and Davidson County.

“Metro Stormwater Regulations” means Chapter 15.64 of the Metropolitan Code of Laws.

“Watercourse” means a channel, natural depression, slough, gulch, stream, creek, pond, reservoir, or lake in which storm runoff and flood water flows either regularly or infrequently. This includes major drainageways for carrying urban storm runoff.

Section 2. Modify Section 17.040.060 (Definitions of General Terms) by **modifying** the following definition:

“Flood, 100-Year” “100-year flood” means a standard adopted by the Federal Emergency Management Agency (FEMA) to identify areas where there exists a one percent annual chance or a 1 in 100 chance of a flood occurring in any year.

Section 3 Section 17.08.030.A of the Metropolitan Code (District Land Use Tables) is amended by **inserting** to the end of the first paragraph the following:

“...In addition, for properties within the Floodplain Overlay District, the land uses and activities listed in Section 17.36.190 shall apply and supersede those allowed by the base zoning district.

Section 4. Section 17.080.030 of the Metropolitan Code (Zoning District Land Use Table) is amended by **inserting** a footnote at the bottom of each page of the table as follows:

NOTE:

FOR PROPERTIES LOCATED IN THE FLOODPLAIN OVERLAY DISTRICT, SEE SECTION 17.36.190 FOR A LIST OF ALLOWED LAND USES.

Section 5. Section 17.12.090.F of the Metropolitan Code (Cluster Lot Option) is amended by **deleting** the phrase "...and floodplain...".

Section 6. Section 17.28.010 of the Metropolitan Code (Environmental Performance Standards: Purpose and Intent) is amended by **deleting** the phrase "...and areas of special flood hazard..." in the last sentence of the paragraph.

Section 7. Section 17.28.020.B of the Metropolitan Code (Applicability: Special Flood Hazard Development Standards) is hereby deleted in its entirety and the remaining sections shall be relettered accordingly.

Section 8. Section 17.28.040 of the Metropolitan Code (Floodplain/Floodway Development Standards) is hereby deleted in its entirety.

Section 9. Section 17.36.010 of the Metropolitan Code (Overlay Districts Established: Purpose and Intent) is amended by **inserting** after the phrase "...greenway system;" the following:

"an overlay to preserve the function and value of floodplains and floodways to store and convey floodwater flows through existing and natural flood conveyance systems to minimize damage to property and human life;"

Section 10. Section 17.36.050.A of the Metropolitan Code (Minimum Performance Standards) is amended by **deleting** the word "nonmanipulated" in the last sentence.

Section 11. Section 17.36.070.B.2 and B.3 of the Metropolitan Code (Planned Unit Development: Residential Standards) is amended by **deleting** the text of items "2" and "3" in their entirety and **inserting** the following in their place, and renumbering the remaining items accordingly:

2. Areas within the Floodplain Overlay District.

Section 12. Section 17.36.170 of the Metropolitan Code (Floodplain Overlay District: General Provisions) is amended by **deleting** in its entirety the existing text and **inserting** in its place the following with a new section heading "Purpose and Intent".

Purpose and Intent. The requirements and standards of this article are intended to maintain the functions and values of floodplains and floodways; prevent the obstruction of watercourses; prevent damage to persons and property; protect life, health and property; minimize damage to public facilities such as water mains, sewer lines, schools, streets, buildings, roads, and bridges; and minimize to the maximum extent possible the effect of man-made structures on floodplains. Regulation of flood-prone properties

allows for the reasonable protection of Nashville’s natural ecosystems and wetlands, and qualifies Metropolitan Nashville and Davidson County for flood insurance under Public Law 1016, 84th Congress (as amended or superseded). In addition to these standards, properties with floodway and floodplain shall be regulated by the Metro Stormwater Regulations.

Section 13. Section 17.36.190 of the Metropolitan Code (Permitted Land Uses) is amended by **deleting** in its entirety the existing text and **inserting** the following:

Permitted Land Uses.

Land uses and activities allowed within the Floodplain Overlay District shall be established by this section and supersede those allowed by a zoning, overlay, and/or redevelopment district. A building, grading, and/or zoning permit shall be required for all such land uses.

- A. Exemptions. Properties zoned DTC, IWD, IR, and IG shall not be constrained by this section, but shall otherwise conform to all provisions of the Metro Stormwater Regulations.
- B. New Development. Except as noted below in Table 17.36.190, new agricultural, single-family and two-family residential, multi-family residential, office, commercial, mixed-use, shopping center, and non-residential construction shall be prohibited within any floodway and 100-year floodplain, and industrial construction within any floodway, and their associated buffers as provided in the Metro Stormwater Regulations, including the clearing of trees and brush, grading, cutting, filling, or dredging.

Table 17.36.190: Floodplain Land Use Table

Land Use	Allowed?	
	Floodway	Floodplain
All utility maintenance activities, including water, sewer, gas, electrical, drainage, and stormwater.	P	P
Functionally water dependent structures such as docks, piers, boat ramps	P	P
Greenways and hiking trails	P	P
Historic and archaeological activities/projects conducted in accordance with all local, state, and federal regulations.	P	P
Parks	P	P
Pasture and croplands	P	P
Accessory structure to park, athletic field, golf course, marina (max. 1,500 square feet total)		SE
Athletic field, golf course, driving range		SE
Nursery (plant/trees)		P

P = permitted
SE = special exception

- C. Existing Development. For the standards that apply to land uses, structures, and signs, existing as of the effective date of this ordinance that are located in either the floodway or the 100-year floodplain, see Chapter 17.40, Article XIV. Nonconforming Uses, Structures, Lots, and Signs.

Section 14. Section 17.36.200 of the Metropolitan Code (Development Standards) is amended by **deleting** in its entirety the existing text and **inserting** the following:

All development within the Floodplain Overlay District shall be in conformance with this Title, the Metro Stormwater Regulations, and the subdivision regulations of Nashville and Davidson County. In the case of conflict, the more restrictive provisions shall apply. The Floodplain Overlay District shall apply to new development as of the effective date of this ordinance, except as provided in Section 17.36.190.C.

Section 15. Section 17.36.210 of the Metropolitan Code (Floodplain Alterations) is amended by **deleting** in its entirety the existing text and **inserting** the following with a new heading “Variances (Board of Zoning Appeals):

Any variance application filed with the Board of Zoning Appeals for property located within the floodway or 100-year floodplain shall not be considered by the board without first considering a written recommendation from the Stormwater Management Appeals Board. In its recommendation to the board, the Stormwater Management Appeals Board shall provide an assessment of the proposed variance’s potential impact on the operation of the floodway and floodplain for its conveyance and storage of water from a 100-year flood to prevent damage to property and human life. The written recommendation shall become null and void after a period of 180 days from the date on which it was received by the Board of Zoning Appeals, unless superseded by a subsequent recommendation. The Board of Zoning Appeals shall approve or disapprove a variance application, prior to consideration of any application by the Metro Planning Commission and/or Metropolitan Council.

Section 16. Section 17.36.220 of the Metropolitan Code (Report to Stormwater Management Appeals Board) is amended by **deleting** the current heading and **inserting** a new heading “Variances (Stormwater Management Appeals Board) and **deleting** the last sentence and **inserting** in its place the following:

...Prior to consideration of a variance application, the Stormwater Management Appeals Board shall receive a recommendation from the Zoning Administrator and the Metro Planning Department. In its recommendation to the board, the Zoning Administrator and the Metro Planning Department shall indicate the proposed variance’s consistency with the Zoning Code regulations. In addition, the Metro Planning Department shall include in its recommendation the proposed variance’s consistency with existing and future land uses in the general vicinity of the variance. The Board shall have approved or disapproved a variance application, prior to consideration of any application by the Metro Planning Commission and/or Metropolitan Council.

Section 17. Title 17 of the Metropolitan Code is amended by inserting the following as a new Section 17.36.221 (Warning and Disclaimer of Liability):

The degree of flood protection required by this Title and the Metro Stormwater Regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the floodway and 100-year floodplain or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Metropolitan Government of Nashville and Davidson County, or by any officer or employee thereof, for any flood damages that result from reliance on this Title or any administrative decision lawfully made thereunder.

Section 18. Section 17.40.170 of the Metropolitan Code is amended by **inserting** as “A” the following before the first paragraph, and relettering the remaining sections accordingly:

A. Floodplain Overlay District. A final site plan shall be required for any development within the Floodplain Overlay District. The site plan shall be submitted for review and approval by the Zoning Administrator and Department of Public Works consistent with Section 17.40.170.A. Final site plan applications shall be of sufficient detail to fully describe the ultimate form of development and demonstrate full compliance with all applicable standards and the Metro Stormwater Regulations. Specifically, all final site plans shall demonstrate the proposed development preserves the function and value of floodplains and floodways to store and convey floodwater flows through existing and natural flood conveyance systems, minimizing damage to property and human life.

Section 19. Section 17.40.340 of the Metropolitan Code (Variances: Limits to Jurisdiction) is amended by **inserting** the following at the end of the paragraph:

“For properties located within the Floodplain Overlay District, see Sections 17.36.210 and 17.36.220 for variance provisions.”

Section 20. Section 17.40.530.B of the Metropolitan Code (Zoning Permit Application) is amended by **deleting** the entire section and **inserting** the following:

B. For development within the Floodplain Overlay District without prior approval by the Department of Public Works.

Section 21. Section 17.40.560 of the Metropolitan Code (Permits Within the Floodplain Overlay District) is amended by **deleting** the existing text and **inserting** in its place the following:

All permits, including but not limited to zoning, building, and grading, shall only be issued for properties located within the Floodplain Overlay District where a final site plan has been approved by the Department of Public Works and Zoning Administrator, Metro Planning Commission and/or Metro Historic Zoning Commission. Permits shall only be issued where the proposed development preserves the function and value of floodplains

and floodways to store and convey floodwater flows through existing and natural flood conveyance systems, minimizing damage to property and human life.

Section 22. Title 17 of the Metropolitan Code is amended by **inserting** a new Section 17.40.561 (Permits Within Any Zoning District) as follows:

Grading permits shall only be issued for properties where a final site plan has been submitted and approved by the Zoning Administrator, Metro Planning Commission, and/or Metro Historic Zoning Commission in accordance with this Title.

Section 23. Section 17.40.580 of the Metropolitan Code (Certificate of Compliance) is amended by **modifying** the first sentence and last sentence as follows:

Following the issuance of a zoning permit, no structure, development, or zone lot shall be used or occupied until the zoning administrator, and in the case of properties located within the Floodplain Overlay District, the Department of Public Works, has certified in a final inspection that the property is in full compliance with all applicable provisions of this Zoning Code and the Metro Stormwater Regulations..” ...Issuance of a certificate of compliance shall not be construed as waiving any provision of this zoning code or the Metro Stormwater Regulations.”

Section 24. Section 17.40.650.A of the Metropolitan Code (Nonconforming Uses: Continuing a Legally Nonconforming Use) is amended by **inserting** the following as “1” and renumbering the remaining items accordingly:

1. Floodway and Floodplain. Properties located within the Floodplain Overlay District shall be in compliance with the nonconforming provisions of the Metro Stormwater Regulations.

Section 25. Section 17.40.650.B of the Metropolitan Code (Nonconforming Uses: Inactivity of a Nonconforming Use) is amended by **inserting** the following at the end of the paragraph:

Notwithstanding the above, properties located within the Floodplain Overlay District shall be in compliance with the nonconforming provisions of the Metro Stormwater Regulations.

Section 26. Section 17.40.650.C of the Metropolitan Code (Nonconforming Uses: Change of Nonconforming Use) is amended by **modifying** the first sentence as follows:

A change in land use classification as defined by the district land use table of Chapter 17.08, or for properties located within the Floodplain Overlay District the list of land uses contained in Chapter 17.36, Article V., shall be subject to the following provisions:

Section 27. Section 17.40.650.C.1 of the Metropolitan Code (Nonconforming Uses: Change of Nonconforming Use) is amended by **inserting** as “1.” the following and renumbering of the existing items:

1. All properties within the Floodplain Overlay District shall have a change of a nonconforming use approved by the Department of Public Works.

Section 28. Modify Section 17.40.650.D (Nonconforming Uses: Alteration of a Structure Containing a Nonconforming Use) by **modifying** the first sentence as follows:

For any use not otherwise protected by Tennessee Code Annotated Section 13-7-208, alterations other than incidental shall be permitted only through the issuance of a permit by the board of zoning appeals subject to the provisions below, except any and all alterations to the interior or exterior of structures within the Floodplain Overlay District, shall only be issued a permit by the Zoning Administrator subject to approval by the Department of Public Works, in lieu of the Board of Zoning Appeals:

Section 29. Section 17.40.650.E of the Metropolitan Code (Nonconforming Uses: Damage or Destruction of a Structure Containing a Nonconforming Use) is amended by **modifying** the first sentence as follows:

For uses not otherwise protected by Tennessee Code Annotated Section 13-7-208, damage or destruction of a building or other form of structure (except a sign) occupied or used by a nonconforming use may be restored pursuant to the following provisions, except any and all structures (including signs) within the Floodplain Overlay District shall only be issued a permit where the proposed development demonstrates it preserves the function and value of floodplains and floodways to store and convey floodwater flows through existing and natural flood conveyance systems, minimizing damage to property and human life.

Section 30. Section 17.40.660 of the Metropolitan Code (Nonconforming Structures) is amended by **modifying** the first sentence as follows:

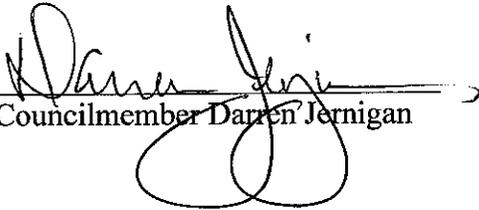
The following provisions shall apply to all nonconforming structures not otherwise protected by Tennessee Code Annotated Section 13-7-208, except any and all structures (including signs) within the Floodplain Overlay District shall only be issued a permit where the proposed development demonstrates it preserves the function and value of floodplains and floodways to store and convey floodwater flows through existing and natural flood conveyance systems, minimizing damage to property and human life.

Section 31. Section 17.40.680 of the Metropolitan Code (Nonconformance to Operational Performance Standards) is amended by **modifying** the first sentence as follows:

The following provisions shall apply to all nonconforming structures not otherwise protected by Tennessee Code Annotated Section 13-7-208, except any and all structures (including signs) within the Floodplain Overlay District shall only be issued a permit where the proposed development demonstrates it preserves the function and value of floodplains and floodways to store and convey floodwater flows through existing and natural flood conveyance systems, minimizing damage to property and human life.

Section 32. That this Ordinance shall take effect immediately after its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:


Councilmember Darren Jernigan

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