

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING CHAPTER 17 – FLOODS, CHAPTER 32 – SITE DEVELOPMENT, AND CHAPTER 50 – UTILITIES OF THE CODE OF ORDINANCES; PROVIDING FLOOD HAZARD AREA REGULATIONS, GRADING AND DRAINAGE PLAN REQUIREMENTS, AND STORMWATER REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE, SAVINGS CLAUSE AND AN OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City of Kyle (the “City”) has experienced unprecedented growth and the development of numerous residential subdivisions and commercial growth in general;

Whereas, the City, geographical, is located in an area that experiences significant rainfall events and is prone to flooding in particular areas;

Whereas, as a result of a robust, growing community, particular areas of the City are more prone to flooding due to natural features and topography, increased impervious coverage and alteration of natural drainage waterways and watershed areas; and

Whereas, the City finds it is necessary for the benefit and welfare of its citizens to have additional regulations enacted and available that provide the City with the ability to better regulate, prevent and enforce issues and concerns related to flooding and drainage;

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Addition of Section 17-18. The City Code of Ordinances, Chapter 17 – Floods, Article II – Flood Hazard Area Regulations, Section 17-18 is hereby added, to read as follows:

Sec. 17-18. – Applicability.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violation of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor offense.

Section 3. Amendment of Section 17-19 - Definitions. The City Code of Ordinances, Chapter 17 – Floods, Article II – Flood Hazard Area Regulations, Section 17-19 – Definitions, is hereby amended to add the following definitions:

Sec. 17-19. - Definitions.

Commercial property means buildings or land intended to generate a profit, either from capital gain or rental income, including multifamily residential; any lot or parcel of land used for any purpose other than single-family residential.

Single-family residential means the use of a lot with one building designed for and containing not more than two separate units with facilities for living, sleeping, cooking, and eating therein.

Section 4. Amendment of Section 17-20 - Penalty. The City Code of Ordinances, Chapter 17 – Floods, Article II – Flood Hazard Area Regulations, Section 17-20 – Penalty, is hereby amended in its entirety to read as follows:

Sec. 17-20. - Penalty.

- (a) **Penalty.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violation of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person, firm, corporation or agent who violates this article or fails to comply with any of its requirements, or who erects, constructs, or alters any structure, or places any fill material, in violation of the detailed statement or drawing submitted and accepted by the city hereunder, shall, upon conviction thereof, be fined not more than \$2,000.00; each day in violation shall be deemed a separate offense. The floodplain administrator, or their designee, is authorized to file with the municipal court clerk a complaint alleging such violation. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation, including the bringing of a suit seeking injunctive relief and attorney's fees and costs.
- (b) **Stop work orders.** Upon notice from the floodplain administrator, or their designee, that work on any building, structure, dike, bridge, or any improvement which would affect water drainage is being done contrary to the provisions of this article or in a dangerous or unsafe manner, such work shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Where an emergency exists, no written notice shall be required to be given by the floodplain administrator, or their designee; provided written notice shall follow within twenty-four (24) hours from the time oral notice to stop work is issued.

- (c) Revocation of permit. The floodplain administrator, or their designee, may revoke a permit or approval issued under the provisions of this regulation in cases where there has been any false statement or misrepresentation as to a material fact in the application or plans upon which the permit or approval was based.

Section 5. Amendment of Section 17-24 – Methods of reducing flood losses. The City Code of Ordinances, Chapter 17 – Floods, Article II – Flood Hazard Area Regulations, Section 17-24 – Methods of reducing flood losses, is hereby amended to modify the section title and add items (6) – (13), to read as follows:

Sec. 17-24. - Methods of reducing flood losses and nuisance conditions.

In order to accomplish its purposes, this article uses the following methods:

- (6) New commercial or single-family residential development or redevelopment shall be designed to provide at least one non-flooded means of ingress/egress for the property during the 100-year flood event.
- (7) New commercial or single-family residential development shall prohibit development within the following stream buffer/setback:
 - a. FEMA Zone AE Streams – 100 feet setback extending on either side of the stream centerline or 25 feet measured from the floodway boundary, whichever is greater. Such setback shall be based on the best available analysis.
 - b. FEMA Zone A and Non-FEMA Stream – 100 feet setback extending on either side of the stream centerline. Such setback shall be based on the best available analysis.
- (8) For commercial sites, approved low impact development/green infrastructure stormwater techniques (i.e.; rain gardens, bio-retention, bio-swales, permeable pavement such as permeable asphalt, permeable concrete, or permeable pavers for parking, driveways, fire lanes, sidewalks, etc.) can be granted in-lieu of a stream buffer/setback. Utilize the most recent San Antonio River Basin Low Impact Development (LID) Technical Guidance Manual for LID design specifications.
- (9) Exceptions for specific activities include a stream crossing for a driveway, transportation routes including but not limited to bike paths and pedestrian trails, utility lines, public water supply intake, property access, stream bank stabilization, stormwater outfalls, etc.
- (10) Projected runoff rates for the design and analysis of stormwater drainage facilities shall be based on the expected ultimate developed state of the upstream contributing area and shall apply

to any and all references to floodplain, flows, design frequencies or any other hydrologic and hydraulic reference found in this chapter.

- (11) Drainage impacts resulting from new development or redevelopment shall not adversely affect properties, including those abutting, downstream and in upstream areas.
- (12) The City of Kyle requires Atlas 14 rainfall depths. Utilize the pre-Atlas 14 500-year floodplain boundary as effective 100-year floodplain boundary. All drainage infrastructure design shall be based on Atlas 14 rainfall depths.

City of Kyle Atlas 14 Rainfall Depths¹										
Duration	Average recurrence interval (years)									
	1	2	5	10	25	50	100	200	500	1000
5-min	0.435	0.527	0.671	0.795	0.972	1.11	1.26	1.42	1.64	1.81
10-min	0.691	0.838	1.07	1.27	1.55	1.79	2.02	2.27	2.59	2.84
15-min	0.884	1.06	1.35	1.59	1.94	2.22	2.51	2.82	3.25	3.58
30-min	1.25	1.50	1.90	2.24	2.72	3.09	3.49	3.93	4.56	5.07
60-min	1.62	1.97	2.50	2.97	3.63	4.15	4.72	5.36	6.29	7.07
2-hr	1.96	2.44	3.15	3.80	4.78	5.61	6.55	7.61	9.18	10.5
3-hr	2.15	2.73	3.54	4.33	5.55	6.61	7.84	9.23	11.3	13.0
6-hr	2.48	3.22	4.22	5.24	6.82	8.25	9.92	11.8	14.7	17.1
12-hr	2.81	3.69	4.89	6.09	7.97	9.65	11.6	13.9	17.4	20.4
24-hr	3.17	4.19	5.59	6.97	9.11	11.0	13.2	15.8	19.8	23.2
2-day	3.60	4.74	6.35	7.90	10.3	12.3	14.7	17.5	21.8	25.5
3-day	3.91	5.12	6.86	8.50	11.0	13.1	15.6	18.4	22.8	26.6
4-day	4.16	5.41	7.24	8.95	11.5	13.7	16.2	19.1	23.5	27.2
7-day	4.74	6.09	8.07	9.91	12.7	15.0	17.6	20.5	24.8	28.4
10-day	5.23	6.65	8.76	10.7	13.5	15.9	18.6	21.5	25.7	29.2
20-day	6.80	8.35	10.8	12.9	15.9	18.3	20.8	23.6	27.6	30.9
30-day	8.11	9.76	12.4	14.7	17.8	20.2	22.7	25.4	29.2	32.2
45-day	9.96	11.8	14.8	17.3	20.6	23.1	25.7	28.3	31.9	34.7
60-day	11.6	13.6	16.9	19.6	23.2	25.9	28.5	31.1	34.5	37.1
¹ Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS). Please refer to NOAA Atlas 14 document for more information. For all other relevant factors, refer to City of Austin Zone 1 Criteria										

- (13) Whenever the city finds that an operator of a site fails to address drainage deficiencies or has negatively impacted previously developed sites, the city may issue a stop work order at a current phase of a construction site overseen by that operator. Such stop work order shall be issued to the operator or person responsible, posted at the construction site, and distributed to all city

departments whose decisions affect any activity at such site or sites under the responsibility of the operator or person responsible. Unless express written exception is made by the city, the construction stop work order shall prohibit any further construction activity against that operator at any site where they are the operator. The stop work order shall bar any further inspection or approval by the city associated with a building permit, grading permit, or any other city authorization necessary to commence or continue construction or to assume occupancy at any site. Issuance of a stop work order shall not be a hindrance to, or a prerequisite for, taking any other action against the violator. Removal of a stop work order prior to written authorization by the administrator shall be a violation of this article. Upon resolution of the violation(s) to the satisfaction of the city, written notice from the city to the operator shall be provided and the operator shall then be authorized to continue working at the site unless an additional violation or stop work order is issued.

Section 6. Amendment of Section 32-45 – Content. The City Code of Ordinances, Chapter 32 – Site Development, Article II – Plan and Procedures, Section 32-45 – Content, Part 5 Grading and drainage plan, is hereby amended to include subsections i. and j., to read as follows:

- (5) Grading and drainage plan. A grading and drainage plan, showing the following:
 - i. Designs for all new development and/or redevelopment shall submit a Lot Grading Plan as part of the site development plan. All new and redevelopment sites shall be graded in accordance with the city signed Lot Grading Plan.
 - j. See Chapter 17 Floods, Article II, Flood Hazard Area Regulations, Division 1, Generally for additional requirements.

Section 7. Amendment of Section 50-401 – Definitions. The City Code of Ordinances, Chapter 50 – Utilities, Article IX – Stormwater Regulations, Section 50-401 – Definitions, is hereby amended to add the following definition:

Sec. 50-401. – Definitions.

Structural Control (or Practice) means a pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to: wet ponds, bioretention, infiltration basins, stormwater wetlands, silt fences, earthen dikes, drainage swales, vegetative lined ditches, vegetative filter strips, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet

protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

Section 8. Amendment of Section 50-411 – Overland flow. The City Code of Ordinances, Chapter 50 – Utilities, Article IX – Stormwater Regulations, Section 50-411 – Overland flow, Part (a) is hereby amended to add subsection (5), to read as follows:

- (a) Drainage patterns must be designed to:
 - (5) Stormwater impacts resulting from new development or redevelopment must not adversely affect properties, including those abutting, downstream and in upstream areas.

Section 9. Amendment of Section 50-412 – Long-term maintenance of post-construction stormwater structural controls. The City Code of Ordinances, Chapter 50 – Utilities, Article IX – Stormwater Regulations, Section 50-412 – Long-term maintenance of post-construction stormwater structural controls, is hereby amended in its entirety to read as follows:

Sec. 50-412. – Long-term maintenance of post-construction stormwater structural controls.

All owners or operators of a new development or redeveloped site shall have a maintenance plan for all stormwater structural controls. The maintenance plan must be filed in the real property records of the county in which the property is located, addressing maintenance requirements for any structural controls installed on site. Operation and maintenance performed shall be documented and retained on site, such as at the offices of the owner or operator and made available for review by the city.

- (a) The city has the authority to require installation, implementation, inspection and maintenance of structural controls meeting or exceeding the requirement of the TPDES Phase II MS4 Permit TXR040000.
- (b) Drainage easements shall be required for structural controls and deed recorded.
- (c) All owner(s) of structural controls shall be required to have a maintenance plan with the city including a schedule of maintenance activities and plans for certified inspections to assess the functionality of the structural control(s).
- (d) In the event that a stormwater facility will be shared by two (2) properties, the property owners sharing the stormwater facility shall execute such agreements, covenants, and easements reasonably required by the city to address joint use of and access to the stormwater facilities.

- (e) Owner(s) of stormwater structural controls that discharge or connect to the city's storm drainage and flood mitigation utility or discharge into Waters of the United States within the city limits must conduct, at a minimum, a certified inspection of each structural control every three (3) years. The certified inspection report must be prepared by a Texas-licensed engineer and the licensed engineer must be chosen from a list of precertified engineers provided by the city.
 - (1) The inspection report must include requirements provided by the city, including but not limited to the following:
 - a. An assessment of the condition of the structural control(s), current as of the date of the report.
 - b. The professional opinion of the engineer regarding the current functionality of the structural control(s).
 - c. Recommendations of the engineer regarding the need for maintenance or modification of the structural control(s) to meet original design specifications.
 - (2) The city may choose to provide a pre-formatted inspection report to be used for each inspection.
 - (3) The inspection report must be submitted to the city's Stormwater Program for review. The owner of a structural control(s) must submit a certified inspection report for each structural control by December 31 once every three (3) years.
 - a. Any maintenance, repair or other deficiencies identified in the certified inspection report must be adequately addressed to ensure compliance with the requirements of this division. Upon completion of all necessary maintenance, repairs or deficiencies identified in the certified inspection report, the owner shall notify the Stormwater Program of the completion.
- (f) Failure to maintain facilities or practices or provide certified inspection reports.
 - (1) If the owner(s) responsible for maintaining the structural control(s) fails to properly maintain the structural control(s) or submit a certified inspection report, the city's Stormwater Program will send a written notice to the owner(s) to correct the problem within thirty (30) days from the owner(s) receipt of the notice. If the owner(s)

fails to comply with the notice, the city may initiate one of the actions specified in Sec. 50-417 or Sec. 50-418.

- (2) If the structural control(s) becomes a nuisance or danger to public safety or public health, the city shall notify the owner(s) responsible for maintenance of the structural control(s) in writing. Upon receipt of that notice, the owner(s) shall have thirty (30) days to complete maintenance and repair requirements. If the owner(s) of the structural control(s) fails to comply with the requirements of the maintenance and/or repair notice, the city may initiate one of the actions specified in Sec. 50-417 or Sec. 50-418.

(g) Precertifications for Engineers.

- (1) An engineer conducting certified structural control inspections under subsection (c) must be precertified by the city's Engineering Department prior to performing structural control inspections for private parties in the city limits.
- (2) The city will promulgate requirements for the precertification of engineers performing structural control inspections. Eligibility for precertification of engineers will be based upon prior relevant licensing, training and work experience.
- (3) Any engineer seeking to be precertified for structural control inspections must be a licensed professional engineer registered in the State of Texas.
- (4) Precertification will extend to the individual's firm.
- (5) The city shall maintain a list of engineers precertified under this subsection. The city reserves the right to add or remove engineers from the list, subject to the requirements promulgated under subsection (g)(2).

Section 10. Amendment of Section 50-417 – Enforcement. The City Code of Ordinances, Chapter 50 – Utilities, Article IX – Stormwater Regulations, Section 50-417 – Enforcement, is hereby amended to add subsection (8), to read as follows:

Sec. 50-417. - Enforcement.

- (8) Stop work order. Whenever the city finds that any operator of a construction site has violated, or continues to violate, any provision of this article, or any order issued hereunder, the city may order a stop work order be issued to the operator or person responsible, posted at the construction site, and distributed to all city departments whose decisions affect any activity at such site. Unless expressly written exception is made by the

city, the stop work order shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the city associated with a building permit, grading permit, or any other city authorization necessary to commence or continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a hindrance to, or a prerequisite for, taking any other action against the violator. Removal of a stop work order prior to written authorization by the administrator shall be a violation of this article. Upon resolution of the violation(s) to the satisfaction of the city, written notice from the city to the operator shall be provided and the operator shall then be authorized to continue working at the site unless an additional violation or stop work order is issued.

Section 11. Amendment of Ordinances. The City Code of Ordinances, Chapters 17, 32, and 50 is hereby amended to the extent of any conflict or inconsistency herewith only and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the city, the terms and provisions of this Ordinance shall govern.

Section 12. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting drainage, flooding and related watershed 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.

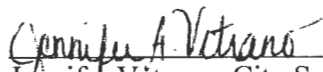
Section 13. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 14. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

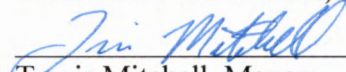
PASSED AND APPROVED on First Reading this 2nd day of June, 2020.

FINALLY PASSED AND APPROVED on this 16th day of June, 2020.

ATTEST:


Jennifer Vetrano, City Secretary

THE CITY OF KYLE, TEXAS


Travis Mitchell, Mayor