



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-1

Date: November 21, 2006

Subject: Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 10, "Planning and Zoning", Article III, "Development", Division D, "Flooding and Flood Damage Prevention"; providing a severability clause; providing a penalty clause; and establishing an effective date.

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Item Reference: City Council Agenda Item P-1, 11/09/05; Item P-2, 08/09/06.

On November 9, 2005 the City Council was briefed on the creation of a Development Services Department, under the management of the Development Services Engineer. This department was created to streamline and simplify development by centralizing engineering and construction related development review into one department.

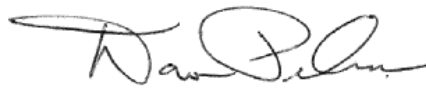
Tyler City Code Chapter 10, Article III, Division D "Flooding and Flood Damage Prevention" designates the City Engineer as the Floodplain Administrator, responsible for reviewing, approving (or denying) and monitoring development within designated floodplains and floodways.

In keeping with the development process initiated last November, accompanying this communication is a proposed amendment to Chapter 10, Article III, Division D "Flooding and Flood Damage Prevention" assigning the responsibility and authority of the Floodplain Administrator to the Development Services Engineer. This modification is recommended subsequent to the last meeting of the Planning and Zoning Commission.

RECOMMENDATION:

It is recommended that the City Council adopt an Ordinance amending Tyler City Code Chapter 10, "Planning and Zoning", Article III, "Development", Division D, "Flooding and Flood Damage Prevention"; providing a severability clause; providing a penalty clause; and establishing an effective date.

Drafted/Recommended By:
Department Leader


Dan Peden

Edited/Submitted By:
City Manager

ORDINANCE NO. 0-2006-98

AN ORDINANCE AMENDING THE CITY OF TYLER CODE CHAPTER 10, "PLANNING & ZONING", ARTICLE III, "DEVELOPMENT", DIVISION D, "FLOODING AND FLOOD DAMAGE PREVENTION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE: AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend or repeal an ordinance, rule or police regulation that is for the good government, peace or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, the City of Tyler has established a Development Services Department for review and approval of engineering related development issues; and

WHEREAS, administration of flooding and flood damage prevention is best addressed during property development;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER:

PART 1: That the Tyler City Code Chapter 10 "Planning and Zoning", Article III, "Development", Division D, "Flooding and Flood Damage Prevention", is hereby amended by amending the definition of "Appeal" in Section 10-93 as follows, with no other changes to Section 10-93:

Sec. 10-93. Definitions.

Appeal means a request for a review of the Floodplain Administrator's (Development Services Engineer) interpretation of any provision of this Article or a request for a variance. (Ord. No. 0-98-91, 11/18/98, Ord. No. 0-2006-98, 11/21/06)

PART 2: That Tyler City Code Chapter 10, “Planning and Zoning”, Article III., “Development”, Division D, “Flooding and Flood Damage Prevention”, is hereby amended by amending Sections 10-99 through 10-100 as follows:

Sec.10-99. Designation of Floodplain Administrator

The Development Services Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations), or successor regulations, pertaining to floodplain management. (Ord. No. 0-98-91, 11/18/98, Ord. No. 0-2006-98, 11/21/06)

Sec. 10-100. Duties and responsibilities of Floodplain Administrator

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

1. Maintaining and holding open for public inspection all records pertaining to this ordinance.
2. Reviewing permit applications to determine whether proposed building sites will be reasonably safe from flooding.
3. Reviewing permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or Local governmental agencies (including the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344), or successor statutes, from which prior approval is required.
4. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation based on information supplied by applicant.
5. Notifying, in riverine situations, adjacent communities and the State coordinating agency, currently the Texas Commission on Environmental Quality (TCEQ) or successor, prior to any alteration or relocation of a watercourse and submitting evidence of such notification to the Federal Emergency Management Agency.
6. Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
7. When base flood elevation data have not been provided in accordance with section 10-94, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source in order to administer the provisions of section 10-103 through 10-108.
8. When regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the City’s FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface

elevation of the base flood more than one (1) foot at any point within the community. (Ord. No. 0-98-91, 11/18/98, Ord. No. 0-2006-98, 11/21/06)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be November 24, 2006.

PASSED AND APPROVED this 21st the day of November, A. D., 2006.

JOSEPH O. SEEBER, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY