

Ordinance 2009-13 - An Ordinance to Amend Division 15 - Floodway Chapter 78 (Zoning Ordinance) and Chapters 56 and 14 of the Code of Ordinances regarding Floodway Management Regulations in the City of Brentwood

## Background

Ordinance 2009-13 provides for proposed amendments to the Floodway Management regulations of the City of Brentwood. As you know, the City is required to have floodway management regulations in place that are acceptable to the Federal Emergency Management Agency (FEMA), the overseeing agency. Both approval of the regulations by FEMA and enforcement by the City is required for property owners to participate in the subsidized federal flood insurance program. Participation in the program is essential for many homeowners with property located in the floodway and floodway fringe areas of the City. For the most part, these homes were constructed prior to the creation of the flood insurance program in the 1970's and in many cases, prior to incorporation of the City or annexation into the City. In some cases, homes that were not initially considered susceptible to flooding have been included in the floodplain in subsequent versions of FEMA's maps.

The proposed ordinance represents a major re-write of the current Floodway Management Ordinance in response to directives from FEMA to prepare an ordinance that is more in line with the State "model" floodway management ordinance. The staff has reconfigured the ordinance to fit the state framework relative to format, terms and processes for administration; however, we are not recommending any significant changes to the more stringent technical standards that have served this community so well over the past 30 years in reducing flood risks to all potentially affected property owners in flood prone areas.

As background, City staff forwarded proposed minor revisions to our floodplain ordinance to FEMA on July 1, 2009 for their review and consideration prior to submission of an ordinance amendment to the City Commission. The proposed revisions included: allowing fences for agricultural purposes within the designated floodway for tracts greater than 3 acres in area; and elimination of a requirement that open, unenclosed decks (floor level) be elevated in the floodway fringe above the 100 year flood level. Without this amendment, new fences to control livestock in the floodway are technically not permissible. In addition, the current code precludes existing, non-conforming homes in the floodway fringe area from having traditional decks without elevating the deck floor higher than the first floor level of the home.

In late September 2009, City staff received a communication from FEMA stating that they had performed a comprehensive review of our entire ordinance and found several deficiencies. Much of the "deficiencies" identified as part of FEMA's review stem from the structure of our current ordinance and their inability to easily locate required language and components. They indicated the City had until December 15, 2009 to complete modifications to the ordinance. Due to the mandated review and approval timetable for any zoning ordinance amendments (under City requirements) and the significant reconfiguration of the current ordinance, the City requested in early October 2009 that FEMA extend the deadline for completion until March 31, 2010. This extension request was denied by FEMA in late October 2009. Ironically, our current ordinance was revised and approved by FEMA in September, 2006, and again in November, 2008 – less than a year ago. No deficiencies were identified by FEMA with either of these recent reviews and approvals.

Unfortunately, due to FEMA's unwillingness to grant us a deadline extension, we are being forced to move forward for your consideration on first reading the attached ordinance without FEMA's official review or approval of this ordinance. The staff has submitted the proposed ordinance to FEMA and will hopefully receive comments back by early January 2010. While staff believes these revisions will satisfy FEMA requirements, further minor revision may be necessary for your consideration and approval on final reading.

The major components of the proposed ordinance amendments are as follows:

1. Modify the framework (presentation) of our ordinance to be consistent with FEMA's approved State model flood ordinance;
2. Recognizes and creates new categories for flood hazard areas including A, AE, AO, AH and A99 zones.
3. Allows fences in the floodway on tracts greater than three (3) acres in area and fences on smaller lots in the floodway fringe area provided the fences are designed not to impede the flow of water;
4. Eliminate the minimum floor elevation requirements for unenclosed decks for non-conforming dwellings located in the floodway fringe;
5. Even though such development does not exist in Brentwood, incorporate required language regarding mobile homes, mobile home subdivisions, and various flood zones not currently depicted on our adopted flood maps.

6. Prior to approval of a development project, requires the establishment of the floodway and 100-year flood elevations within a designated floodplain area where the base floodway or flood elevations have not been previously established.
7. Planning Commission review and approval for additions and renovations to existing residential structures and fences in the floodplain has been replaced with administrative review and approval. The floodway management ordinance will also be removed from the zoning ordinance except for references to overlay flood zones on the zoning map. Planning Commission review and approval was created 30 years ago, before there was a professional engineering and planning staff at the City, and is not consistent with the State's Model Ordinance.
8. Any variance requests will be considered by the Board of Construction Appeals rather than the Planning Commission or Board of Zoning Appeals due to the technical nature of the request.

As noted earlier, the City of Brentwood has historically been more restrictive than FEMA's minimum requirements for development in the floodway and floodway fringe areas. While the basic structure of the proposed ordinance will change significantly, we are not recommending any significant changes to City's stricter development standards within the designated floodway and floodway fringe areas.

Some examples of the stricter floodway management development standards in Brentwood include the following requirements:

- The finished floor area of living space in the floodway fringe area must be two feet rather than one foot above the 100 year flood elevation;
- Provisions that would allow non-residential buildings (commercial, schools, churches, etc) to be built at a lower floor elevation using flood proof construction techniques are not permitted.
- The finished floor area for an enclosed garage also must be elevated two feet above the 100 year flood elevation and no storage or parking enclosures may be built beneath the living area of homes built in the floodway fringe areas;
- Compensating cuts and fills are required for any development in the floodway fringe area – i.e. no excess filling permitted on such lots.
- Accessory structures such as storage buildings must be elevated two feet above the 100 year flood elevation.
- No horizontal additions or improvements that expand the existing footprint of the dwelling are permitted for homes located in the floodway (main channel); however, vertical improvements to the structure are still permitted if they do not increase the home's value by more than 50%.

The proposed ordinance revision is scheduled for first reading before the Board of Commissioners at the regular meeting on December 14, 2009. If approved, the Planning Commission will review this amendment and provide a recommendation at their regular meeting of January 4, 2010. A formal public hearing will take place before the Board of Commissioners on January 11, 2010, with second and final reading scheduled for the regular meeting on January 25, 2010. Please note that if FEMA delays its review and response to the City by more than 30 days or so, we may need to delay final reading beyond the January 25, 2010 meeting.

#### Staff Recommendation

Staff recommends approval of the accompanying ordinance on first reading.

#### Previous Commission Action

On November 10, 2008 the Board of Commissioners approved Ordinance 2008-19, on second and final reading, amending the Municipal Code regarding the City's floodway.

On September 25, 2006 the Board of Commissioners approved Ordinance 2006-20 on second and final reading, which amended the Municipal Code revising Chapter 78 regarding floodway district regulations.

On January 13, 2003 the Board of Commissioners approved Ordinance 2002-25, which revised Chapter 78, Article III Division 14 regarding floodway district regulations.