

**ORDINANCE NO.**

**AN ORDINANCE GRANTING VARIANCES FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF THE BOARDWALK TRAIL AT LADY BIRD LAKE IN THE 25 AND 100-YEAR FLOODPLAINS; ESTABLISHING CONDITIONS FOR THE VARIANCES; AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** This ordinance applies to the construction of the Boardwalk Trail at Lady Bird Lake as described in Site Plan Application No. SPC-2011-0327C.

**PART 2.** Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.7 (*Conditions for Issuance*). Council finds that the variances granted by this ordinance are the minimum necessary to afford relief, are based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variances granted in this ordinance will not result in substantial increase in flood heights, additional threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**PART 3.** A variance is granted from:

- (A) the requirement in City Code Section 25-7-61 (*Criteria for Approval of Plats, Construction Plans, and Site Plans*) that a site plan not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property;
- (B) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.4 (*Activities in Riverine Flood Hazard Areas*) that development not be approved unless the proposed development demonstrates that it will not increase design flood elevation that results in additional identifiable adverse flooding on other property;
- (C) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5 (*Floodway Encroachment*) that development involving floodway encroachment not be approved unless a Professional Engineer

demonstrates that the development will not cause any increase of the level of the design flood; and

- (D) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5.1 (*Floodway Revisions*) that no floodplain variance may be considered for a floodway encroachment increasing the level of the design flood until after the applicant has applied for a flood insurance rate map (“FIRM”) revision and has received approval of the revision from the Federal Emergency Management Agency (“FEMA”), to allow Council to consider this variance before the applicant has applied for and received approval of the FIRM revision by FEMA.

**PART 4.** The variance granted in this ordinance is effective only if the applicant meets the following conditions:

- (A) The applicant shall submit to FEMA a conditional letter of map revision application for the Boardwalk Trail at Lady Bird Lake (CLOMR), after the application has been reviewed by the City. The applicant shall complete all actions necessary to respond to any review comments by FEMA and to obtain final approval by FEMA.
- (B) The applicant shall submit to FEMA a letter of map revision application for the Boardwalk Trail at Lady Bird Lake (LOMR), after the application has been reviewed by the City. The applicant shall complete all actions necessary to respond to any review comments by FEMA and to obtain final approval by FEMA. The City may not issue a letter of final acceptance of the project until FEMA has issued a letter of acknowledgment of a complete LOMR application.
- (C) The applicant shall submit a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed structure will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Civil Engineers Manual 24 (*Flood Resistant Design and Construction*) before the City may release the Site Development Permit for the project.

**PART 5.** This variance expires if the project for which this variance is granted does not receive a released Site Plan and Building Permit on or before July 9, 2013.

**PART 6.** Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services.

Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

**PART 7.** This ordinance takes effect on \_\_\_\_\_, 2012.

**PASSED AND APPROVED**

\_\_\_\_\_, 2012      § \_\_\_\_\_  
   § \_\_\_\_\_  
   § \_\_\_\_\_  
   Lee Leffingwell  
   Mayor

**APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
                         Karen Kennard                           Shirley A. Gentry  
                         City Attorney                           City Clerk