

BILL NO. 2014-51

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT CODE TO UPDATE PROVISIONS REGARDING THE REGIONAL MULTIPLE SPECIES HABITAT CONSERVATION PLAN CONSISTENT WITH CORRESPONDING UPDATES UNDERTAKEN BY OTHER SOUTHERN NEVADA LOCAL GOVERNMENTS, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Flinn Fagg, Director of Planning

Summary: Amends the Unified Development Code to update provisions regarding the regional Multiple Species Habitat Conservation Plan consistent with corresponding updates undertaken by other Southern Nevada local governments.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Ordinance No. 6289 and the Unified Development Code adopted as Title 19 of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, are hereby amended as set forth in Section 2 of this Ordinance. The amendments are deemed to be amendments to both Ordinance No. 6289 and the Unified Development Code adopted as Title 19.

SECTION 2: Title 19, Chapter 2, Section 300, is hereby amended to read as follows:

19.02.300 MULTIPLE SPECIES HABITAT CONSERVATION

A. Definitions

As used in this Section, the following terms shall have the following meanings:

"Act" means the Federal Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq., as amended.

"Certificate of inclusion" means a certificate issued by the City in accordance with this Section to authorize activities to be covered under the Incidental Take Permit.

"Development permit" means an on-site or off-site permit issued by the City to authorize the development of a parcel which has not previously been improved in accordance with all applicable City ordinances. The term includes building permits and grading permits for construction activity, but does not include demolition permits or temporary power permits.

1 ["Implementing Agreement"] "Implementation Agreement" means the document entitled ["Clark County
2 Multiple Species Habitat Conservation Plan Implementing Agreement,"] Interlocal Agreement for the
3 Implementation of the Clark County Multiple Species Habitat Conservation Plan and Section 10(a)(1)(B)
4 Permit," approved by the City Council on [November 1, 2000,] December 18, 2013, and as thereafter
5 modified.

6 "Incidental Take Permit" means the permit, effective as of February 1, 2001, issued by the Secretary of
7 Interior pursuant to Section 10(a)(1)(B) of the Act (16 U.S.C §1539), which incorporates by reference the
8 Multiple Species Habitat Conservation Plan and Implementing Agreement and allows the incidental taking
9 of Threatened or Endangered Species in the course of otherwise lawful activities.

10 "Mitigation fee" means the MSHCP fee imposed pursuant to the provisions of this Section.

11 "Multiple Species Habitat Conservation Plan" or "MSHCP" means the "Clark County Multiple Species
12 Habitat Conservation Plan" approved by the City Council on August 18, 1999, and as thereafter modified.

13 "Non-residential development" means development other than residential development.

14 "Parcel" means a parcel of real property that is the subject of a development permit application.

15 ["Residential unit" mean a building or portion thereof used by one family and containing but one kitchen,
16 and designed for single family residential purposes only.] "Residential development" means development
17 designed to be used for single-family residential purposes only, consisting of units containing one kitchen
18 only.

19 ["Section 10(a) permit" means a permit issued by the Secretary of Interior pursuant to Section 10(a) of the
20 Federal Endangered Species Act of 1973, 16 U.S.C. Section 1539, to allow the incidental taking of
21 threatened or endangered species in the course of otherwise lawful activities.]

22 "Special Reserve Fund" or "Fund" means the habitat conservation fund established by Clark County
23 pursuant to the Implementation Agreement.

24 B. Purpose of Provisions

25 The purposes of this Section are to:

- 26 1. Provide funds to implement conservation actions within the City to protect various habitats

1 and species located within the City;

2 2. Comply with the terms of the Multiple Species Habitat Conservation Plan and the
3 corresponding [Implementing] Implementation Agreement, both of which have been approved by the City
4 Council; and

5 3. Comply with [Section 10(a) permits that have been or will be issued with regard] the
6 Incidental Take Permit, as it may be amended from time to time, and any successor permits as they pertain
7 to development activity within the City.

8 C. Mitigation Fee

9 1. Development Permits

10 No development permit for or real property located within the City shall be issued or approved without
11 payment of the mitigation fee. Except as otherwise provided in Subparagraphs (a) and (b)[,] below and the
12 remaining provisions of this Section, each applicant for a development permit shall pay [a] the mitigation
13 fee of [five hundred fifty dollars] \$550.00 per gross acre (or portion thereof) that is included within any
14 parcel to be developed and any additional area to be disturbed for related off-site improvements. Payment
15 of the mitigation fee allows a development permit applicant, by means of certificate of inclusion, to comply
16 with the Act through the Incidental Take Permit. No waiver, adjustment or refund of mitigation fees shall
17 be available except as specified in this Subsection (C).

18 a. [Land Disturbance Report] Submission of Form Required. Each applicant for a
19 development permit shall, prior to issuance thereof, complete a [land disturbance report on the forms] land
20 disturbance/mitigation fee form furnished by City departments responsible for issuing development
21 permits. The [land disturbance report] form must be complete, be signed by the applicant and contain at a
22 minimum the following information: assessor's parcel number(s), number of acres within the parcel and the
23 area to be disturbed by related off-site improvements, and the amount of any mitigation fee(s) actually paid.

24 b. Processing Fee. Each applicant for a development permit shall pay to the City
25 department responsible for the issuance of a development permit a processing fee of [twenty-five dollars]
26 \$25.00 per residential development permit and [fifty dollars] \$50.00 per [commercial] non-residential

development permit.

2. Exceptions

The following types of development are not [required to pay] subject to payment of the mitigation fee:

a. Reconstruction of any structure damaged or destroyed by fire or other natural causes;

b. Rehabilitation or remodeling of existing structures or existing off-site improvements; or

c. [Any land disturbance by the City for a governmental purpose.] Disturbance of any land (including land conveyed from Federal to private ownership) that is covered by and subject to the terms and conditions of a habitat conservation plan and incidental take permit which:

i. Are separate and distinct from the MSHCP and the Incidental Take Permit defined herein; and

ii. Have been approved by U.S. Fish and Wildlife Service.

[3. Adjustments

In the following cases, the mitigation fee shall be adjusted as indicated:

a. For any development concerning which the developer previously has paid mitigation related fees pursuant to a consultation under Section 7 of the Federal Endangered Species Act, the mitigation fee shall be reduced by the amount of any Section 7 fees actually paid to the federal government.

b. For single family residential development and manufactured housing on lots two gross acres in size or greater, where less than one-quarter of an acre of the property is graded or otherwise disturbed, with the balance of the property left in its natural condition, the mitigation fee shall be one hundred thirty-seven dollars and fifty cents. Where more than one-quarter acre but less than one-half acre is graded or otherwise disturbed, and the balance of the property is left in its natural condition, the fee shall be two hundred seventy-five dollars. Where more than one-half acre is graded or otherwise disturbed by the construction, the fee shall be five hundred fifty dollars per acre for each acre (or fraction thereof greater

1 than one-half) which is graded or otherwise disturbed.

2 c. For freestanding off-premises signs, communication towers and similar structures
3 that are unoccupied except for maintenance, where less than one-quarter of an acre of the property is
4 graded or otherwise disturbed, the mitigation fee shall be one hundred thirty-seven dollars and fifty cents.
5 Where more than one-quarter but less than one-half acre is graded or otherwise disturbed, the fee shall be
6 two hundred seventy-five dollars. Where more than one-half acre is graded or otherwise disturbed by the
7 construction, the fee shall be two hundred fifty dollars per acre for each acre (or fraction thereof greater
8 than one-half) which is graded or otherwise disturbed.

9 d. Where a development permit has been issued previously and has expired, the
10 applicant for a new development permit on the same parcel shall pay the mitigation fee required by the
11 current version of this Section less any amount previously paid under this Section or its predecessor.]

12 3. Consideration of Fees Previously Paid Pursuant to Section 7 of the Act
13 Applicants for a development permit who have previously paid per-acre fees pursuant to Section 7 of the
14 Act with respect to the land for which the permit is sought are subject to the following:

15 a. If an applicant previously paid Section 7 fees in an amount less than \$550.00 per
16 gross disturbed acre (or any portion thereof) that is located within the development parcel, including areas
17 disturbed by related offsite improvements, the applicant shall pay the difference between \$550.00 per acre
18 and the amount per-acre paid in Section 7 fees.

19 b. If an applicant previously paid Section 7 fees in an amount equal to or greater
20 \$550.00 per gross disturbed acre (or any portion thereof) that is located within the development parcel,
21 including areas disturbed by related offsite improvements, the applicant is not required to pay the
22 mitigation fees for those acres.

23 4. Refunds
24 An applicant who 1) has submitted a development permit application, 2) has paid mitigation fees regarding
25 the acreage covered by the application, 3) thereafter has withdrawn the application prior to permit issuance,
26 and 4) desires a partial refund of mitigation fees paid may seek such refund by filing a written request with

1 the City. The City will research the request to determine if the permit application has been withdrawn and
2 a refund appropriate. If the City so determines, the City will forward to the Clark County Desert
3 Conservation Program a completed Fee Refund form, the written request for refund, and a copy of the
4 original permit. County personnel will prepare the refund paperwork for the consent agenda for the next
5 available Board of County Commissioners meeting. Upon approval by the Board of County
6 Commissioners, the refund amount will be transferred to the City's Department of Finance. The applicant
7 shall be entitled to receive 80% of the mitigation fees paid to the County by the City with respect to the
8 acreage. Processing fees paid to the City by the applicant are not refundable.

9 [4.] 5. Collection and Deposit to Special Reserve Fund

10 All mitigation fees collected pursuant to the provisions of this Section shall be transmitted on a monthly
11 basis, pursuant to [an interlocal agreement,] the Implementation Agreement, for deposit into [a special
12 reserve fund. That fund,] the Special Reserve Fund. The Fund, including interest and other income which
13 accrues thereto, shall be expended solely for the development and implementation of the terms of the
14 [Multiple Species Habitat Conservation Plan and associated Section 10(a) permits, as those documents
15 currently exist or as they may hereafter be amended or issued.] Incidental Take Permit, as it may be
16 amended from time to time, and any successor permits.

17 [5.] 6. Real Property Acceptance In Lieu of Payment

18 After approval by the U.S. Fish and Wildlife Service and the City Council, and upon compliance with any
19 applicable statutory or charter provisions, the City or its designee may accept real property or interests
20 therein in lieu of the payment of mitigation fees. The fair market value of such real property must equal or
21 exceed the amount of the mitigation fees otherwise required to be paid.

22 D. Compliance with [Provisions] the Incidental Take Permit

23 [1. Any person, firm or entity that engages in any activity within the City which is covered by
24 the Multiple Species Habitat Conservation Plan, including residential and commercial development,
25 agriculture, mining, grazing, and off-highway vehicle activities shall comply with the provisions of the
26 following, all of which are on file in the offices of the City Clerk and the Department:

- a. This Section;
- b. The Multiple Species Habitat Conservation Plan;
- c. The Implementing Agreement; and
- d. Any Section 10(a) permit issued in connection therewith.

2. Any person, firm or entity (including any agent or employee) that complies with the provisions of this Section is permitted to incidentally take any species for which a Section 10(a) permit has been issued in favor of the City so long as that person, firm or entity has complied and continues to comply with the provision of the Multiple Species Habitat Conservation Plan, the Implementing Agreement, and any Section 10(a) permit issued in connection therewith.

3. Any person, firm or entity that is not required to pay a mitigation fee pursuant to this Section, but which is otherwise in compliance with the provisions of this Section, the Multiple Species Habitat Conservation Plan, the Implementing Agreement, and any Section 10(a) permit issued in connection therewith, is permitted to incidentally take any species covered by the Multiple Species Habitat Conservation Plan and for which a Section 10(a) permit has been issued in favor of the City.

4. The City is authorized to immediately revoke the permission granted to any person, firm or entity pursuant to Paragraphs (2) or (3), without additional action or notice, if that person, firm or entity ceases to be in compliance with Paragraphs (1), (2) or (3) of this Subsection.]

1. Except as otherwise provided in Paragraph (5) below, each person who engages in any activity within the City that is covered by the MSHCP, including without limitation residential and non-residential development, agriculture, mining, grazing, and off-highway vehicle activities, must comply with all applicable provisions of the Incidental Take Permit. Such compliance is necessary in order for the activity to be covered by a certificate of inclusion.

2. Each person who complies with the provisions of this Section is permitted to incidentally take any species concerning which the Incidental Take Permit has been issued so long as that person has complied and continues to comply with the applicable provisions of the Incidental Take Permit and thereby has qualified for a certificate of inclusion.

1 3. Each person whose activities do not require the payment of a mitigation fee pursuant to this
2 Section but are otherwise in compliance with the applicable provisions of the Incidental Take Permit is
3 hereby permitted, in connection with those activities, to incidentally take any species covered by the
4 Incidental Take Permit.

5 4. If the activities of any person that have been authorized by a certificate of inclusion cease
6 to be in compliance with Paragraphs (1), (2) or (3) of this Subsection, the City is authorized to immediately
7 revoke that certificate without additional action or notice.

8 5. Property described in Subparagraph (C)(2)(c) or Subparagraph (C)(3)(b) is not covered by
9 or subject to the Incidental Take Permit.

10 SECTION 3: The Department of Planning is authorized and directed to incorporate into
11 the Unified Development Code the amendments set forth in Section 2 of this Ordinance.

12 SECTION 4: If any section, subsection, subdivision, paragraph, sentence, clause or
13 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or
14 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
15 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City
16 of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph,
17 sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections,
18 subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2014.

APPROVED:

By CAROLYN G. GOODMAN, Mayor

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed, Deputy City Attorney

1 The above and foregoing ordinance was first proposed and read by title to the City Council on the _____
2 day of _____, 2014, and referred to a committee for recommendation, the committee
3 being composed of the following members _____;
4 thereafter the said committee reported favorably on said ordinance on the _____ day of
5 _____, 2014, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council as first
7 introduced and adopted by the following vote:

8 VOTING "AYE": _____

9 VOTING "NAY": _____

10 ABSENT: _____

11 APPROVED:

12
13 By _____
CAROLYN G. GOODMAN, Mayor

14 ATTEST:

15
16 _____
BEVERLY K. BRIDGES, MMC
City Clerk