To: Mayor Hart, and Ivins City Council

From: KayeLynn Van Wagenen
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Ivins, UT 84738

Concern: Damage to existing homes/property caused by nearby construction.

Proposal: Draft and adopt an ordinance protecting adjacent properties

In Ivins, we have a number of unique geo-technical issues that can raise difficulty with development, blue clay, ground water, and others. In an attempt to mitigate these issues, developers often undertake extensive excavation, compaction of the soils using impact with heavy equipment, or driving piles deep into the ground, and routing water to adjacent properties. Extreme vibration can cause cracks in the walls and foundations of nearby homes. Ground water causes flood damage, or undermines foundations and landscaping. Noise, dust, and vibration, take a toll on the quality of life of adjacent homeowners.

Repairing such damage is costly. When the developer is unresponsive, the homeowner's only choice may be to pursue litigation. Through no fault of their own, the homeowner's life savings can be lost in the legal process.

I propose the city adopt an ordinance to protect adjacent homeowners.

When the city approves a permit to begin developing a parcel of land surrounded by existing homes, the developer, agrees, in writing to the following:

- Before excavation begins, protection measures are implemented to prevent damage to surrounding homes.

- Where ground water is present or anticipated, drainage systems are required to be in place prior to the start of excavation.

- Where soil compaction by direct, forceful impact is required, that impact is only allowed at a level that won't cause damage to surrounding properties.

- The issuing of building permits should be preceded by a thorough review of the developer's plan to prevent damage to surrounding properties. This review should be conducted by the city engineer or an independent engineering consultant retained by the city. The cost of an independent engineering review could be included in the price of a building permit. Most importantly, the permit should be denied if the damage prevention plan is inadequate.

- The ordinance could require a bond be secured by the developer, in a sufficient amount to cover repair to adjacent properties should the worst scenario occur. The bond should be in effect before development begins.

- The ordinance should specify hours of operation by the construction crews. Back up alarms, heavy equipment operation, vibration, loud music, road closures and other nuisance issues should be limited to prescribed hours.

- Homeowners adjacent to the site should be notified in writing of the intention to begin development. Contact information for a project ombudsman should be provided to all homeowners with properties adjacent to the project

In past Planning Commission meetings, I've heard the role of the city is not to get involved in disputes between residents and developers. I believe an ordinance, such as the one I propose, would relieve the city of that role and place responsibility with the developer.

There is precedent. A brief Google search revealed multiply cities who have adopted ordinances to protect adjacent property. I have listed only 4 of the many I found.

I appreciate the opportunity to speak to you tonight and urge you to consider drafting and adopting an ordinance such as the one I have proposed.

Respectfully,
KayeLynn Van Wagenen

City of New Orleans
Comprehensive Zoning Ordinance

Philadelphia, PA

New Jersey
Code: 5.23-2.34

Riverdale, GA

NEW ORLEANS COMPREHENSIVE ZONING ORDINANCE

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ARTICLE 21 ON-SITE DEVELOPMENT STANDARDS

21.1 PURPOSE

The purpose of this Article is to address the site improvements on a lot other than the principal building. This includes adequate public facility requirements, environmental performance standards, exterior lighting regulations, accessory structures and uses, permitted encroachments into required yards, and temporary uses.

21.2 ADEQUATE PUBLIC FACILITY REQUIREMENTS

Land proposed for development shall be served adequately by essential public facilities and services. Land will not be approved for development unless and until adequate public facilities exist or provision has been made for water facilities, wastewater facilities, drainage facilities and transportation facilities necessary to serve the proposed development, whether such facilities are located within the property being platted or outside of the site. This policy may be defined further and supplemented by other City ordinances.

A. Conformance to Plans

Proposed public improvements shall conform to the Master Plan and all applicable public facilities and capital improvements plans.

B. Water

All platted lots shall be connected to a public water system or properly permitted to ensure water for health and emergency purposes, including adequate fire protection.

C. Wastewater

All platted lots shall be served by an approved means of wastewater collection and treatment.

D. Streets

All streets shall provide a safe, convenient and functional system for vehicular and pedestrian circulation and shall be properly related to the City Major Street Plan. All streets shall be appropriate for the traffic characteristics and impacts of the proposed development.

E. Drainage

Drainage improvements shall accommodate potential runoff from upstream drainage areas and designed to prevent overloading the capacity of the downstream drainage system. The City may require the phasing of development, the use of control methods such as retention, detention or pumping systems, and/or the construction of off-site drainage improvements to mitigate the impacts of the proposed development. All sites shall meet the stormwater management requirements of the Code of Ordinances.

F. Phasing

The City may require the phasing of development or improvements to maintain current levels of service for existing public services and facilities or for other reasons based upon maintaining the health, safety and general welfare of the City's inhabitants.

G. Complete Streets

In accordance with Section 146-36 of the City Code, all planning, design, funding, operation, and maintenance of the City's transportation system shall comply with the City's Complete Streets policy.

H. Subdivision Regulations

All subdivisions shall comply with the City of New Orleans Subdivision Regulations. Where conflicts occur with this Ordinance, the Director of Safety and Permits shall determine which regulations to follow.

I. Wetlands

Any development of lots located, or partially located, within the area subject to the Coastal Resources Management Act of 1978 requires a Coastal Use Permit, in accordance with the City Code.

Adopted by Ord. 27,683 MCS, §4, March 6, 2018, Zoning Docket 086-17

21.3 ENVIRONMENTAL PERFORMANCE STANDARDS

All uses shall be operated to comply with standards of performance, or their equivalent, which have been, or which may be adopted or amended from time to time, by the Louisiana Department of Environmental Quality (LDEQ) pursuant to the Revised Statutes of Louisiana. All uses shall be operated to comply with the performance standards described in this section below. In addition to these performance standards, all uses shall be constructed, maintained, and operated to prevent negative impacts to the use and occupation of adjacent premises, including impacts from the emission or creation of noise, vibration, odor, radiation, fire, explosive hazard, or glare. Nothing in this section is intended to alter, change, modify, or abrogate any authority granted exclusively to any State commission. These standards do not apply to construction sites.

A. Noise

No activity or use may be conducted in a manner that generates a level of sound, as measured on another property, greater than that allowed by the Health Department and any federal or state regulations, as amended from time to time. These limits do not apply to noises that result from safety signals or warning devices, and moving sources such as motor vehicles, railroads, and aircraft. This section does not apply to noises not directly under the control of the owner or occupant of the property.

B. Vibration

In general, this means that a person of normal sensitivities does not feel any vibrations at any point off the lot where the use is located and shall comply with all applicable federal, state, and local laws. Vibrations from vehicles that leave the site, such as trucks, trains, airplanes, and helicopters, are exempt from this regulation.

C. Dust and Air Pollution

Dust and other types of air pollution, borne by the wind from sources such as storage areas, yards, roads, conveying equipment, and the like within lot boundaries, shall be kept to a minimum by appropriate landscape, screening, sheltering, paving, fencing, wetting, collecting, or other acceptable means. All activities producing dust and other types of air pollution shall comply with all applicable federal, state, and local laws.

D. Regulated Materials

The storage, handling, or transport of regulated materials shall comply with all federal, state, and local regulations.

E. Fire and Explosion Hazards

Materials that present potential fire and explosion hazards shall be transported, stored and used only in conformance with all applicable federal, state, and local regulations.

F. Proper Drainage

The operation of any use in any district shall provide for adequate stormwater drainage of the site and shall be designed to prevent overloading the capacity of the drainage system, including the requirements of the Code of Ordinances.

G. Litter Control

All non-residential uses are required to submit a litter abatement plan to the Sanitation Department for their review and approval.

H. Debris

The retention and removal of all construction and demolition related debris generated by permitted projects shall comply with Section 103 of the International Building Code as amended by the City of New Orleans.

Adopted by Ord. 27,683 MCS, §4, March 6, 2018, Zoning Docket 086-17

altogether prohibit the issuance or renewal of any permit required for short term rental use. No provision of this ordinance, including without limitations the non-conforming use provisions set forth in Article 25, shall be construed to authorize the continued use of any property as a short term rental in the event the City modifies its short term rental permitting regulations in a manner that limits or prohibits the issuance of a short term rental permit.

b. The short term rental shall appear outwardly to be a residential dwelling.
c. Use of the short term rental for commercial or social events shall be prohibited.
d. The short term rental shall not adversely affect the residential character of the neighborhood by generating excessive noise, vibrations, garbage, odors, or other secondary effects that unreasonably interfere with others' use and enjoyment of their residences, as more fully set forth in standards set outlined in the City Code.
e. A non-commercial short term rental shall be governed by both a noise abatement plan and a sanitation plan.
f. No signs are allowed for a Non-Commercial Short Term Rental.
g. The permit shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the permit number, the contact information for the operator, the permit type and the bedrooms and occupancy limit.
h. The operator, who may not be a guest, must physically reside in a bedroom on the lot of record containing the short-term rental during any guest stays and, if required by the City Code, must maintain a primary residence on the lot.
i. No person may be the operator of more than one (1) non-commercial short term rental.
j. The registered operator must be onsite during a guest's stay and must respond to a complaint within one (1) hour of the complaint being made. Failure to comply can lead to license revocation.
k. Only natural persons aged 18 or over may own property used as a non-commercial short term rental. Ownership, in whole or in part, by a business entity, trust, or any other juridical person is prohibited. No person may own, in whole or in part, more than one property used as a non-commercial short term rental.
l. Only one (1) non-commercial short term rental permit shall be issued for each lot.
m. Except as provided in Section 21.8.C.18.r, only one (1) non-commercial short term rental permit may be issued within each city block, inclusive of all lots fronting any exterior boundary or said block and all interior lots not fronting the public right of way.
n. Small Multi-Family Affordable Dwellings as authorized in the base zoning district shall be exempted from the block limitation provided that they are compliant with all affordability monitoring requirements and other laws.
o. Up to three (3) guest bedrooms may be rented to guests, and occupancy shall be limited to two (2) guests per guest bedroom with a maximum of six (6) guests. At least one bedroom on the lot of record containing a non-commercial short term rental shall be reserved exclusively for the operator and shall not be advertised or used as a guest bedroom.
p. If more than one (1) principal building exists on a lot, or two (2) or more contiguous lots have been historically acquired together and second building was originally constructed and has been used for habitable space as defined by the Building Code, as least five (5) years prior to the establishment of the short term rental, it may be included in the operation of the short term rental.

q. In residential districts and HU-B1A Neighborhood Business District, HU-B1 Neighborhood Business District, HU-MU Neighborhood Mixed-Use District, S-LM Lake Area Marina District, MU-1 Medium Intensity Mixed-Use District, and MU-2 High Intensity Mixed-Use District, only one (1) Accessory Bed and Breakfast, one (1) Principal Bed and Breakfast, or one (1) Non-Commercial Short Term Rental is permitted within each city block, inclusive of all lots fronting any exterior boundary of said block and all interior lots not fronting the public right of way.

r. Any property owner may request a special exception from an applicable block limitation, provided that no more than two (2) special exceptions may be in effect within any block at one time. All applications for a special exception shall include a Project Neighborhood Participation Program (Project NPP), conducted in accordance with Section 4.2.D.2, except that the mailed notice to owners of record required by Section 3.3.B.2.b shall be limited to properties located within one hundred (100) feet of the property lines of the subject property. Said request shall be submitted to the Executive Director of the City Planning Commission, who shall review and make recommendations to the City Council relative to the special exception request. The City Planning staff shall render its recommendations within sixty days of receipt, using the following review standards:
    i. Is the requested increase compatible with the surrounding land use and structures?
    ii. Are they unique geographic considerations which would mitigate the impact of an additional non-commercial short tern rental within the block?
    iii. Are there unique use conditions in the surrounding areas which would be well-served by or mitigate the impact of an additional non-commercial short term rental use within the block?
    iv. Will the additional non-commercial short term rental use increase traffic and safety hazards?
    v. Will the additional non-commercial short term rental use create parking issues around the block or in the surrounding areas?
    vi. Will the additional non-commercial short term rental use impair the health, safety and welfare of the neighboring properties?

The council shall have sixty (60) days from the receipt of the recommendation to approve, deny, or modify the special exception request by motion. The granting of a special exemption shall not entitle the applicant to a short-term rental permit unless the applicant otherwise complies with the permitting requirements set forth in the Code. A special exception granted pursuant to the subsection shall lapse in the event the holder of the permit transfers the property subject to the special exception or if the owner's permit is revoked. In the event the Council denies a request for a special exception within a particular block, the applicant may not reapply for a special exception for a period of two years.

Adopted by Ordinance No. 29382, March 23, 2023, Zoning Docket 02/23

Philadelphia News

From Temple University's Master of Journalism program



Council proposal would add protections for adjacent property construction

Posted on April 26, 2021 by Thomas Riese

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Updated 5/10/21 to include comment from Philadelphia L&I.

For a city that's known for its iconic rowhouses – by some counts, up to 70% of its housing stock – Philadelphia doesn't have comprehensive protections in place for the building structures themselves. That's why in January, Councilmember Maria Quiñones-Sánchez proposed a bill in City Council that would require builders to have general liability insurance that protects adjacent properties during construction or demolition. This bill would make builders accountable for damage that some homeowners have grappled with for years, sometimes without knowing where to turn for compensation.

To become a licensed contractor in Philadelphia, one must provide a certificate that includes $500,000 of general liability insurance. However, there's currently no language included in the requirements to support adjacent properties in the event of accidental damage.

Quiñones-Sánchez represents the city's 7th district, including parts of Kensington and North Philadelphia that have started to see an uptick in development.

"I am committed to ensuring that any development in South Kensington is equitable, safe, inclusive, and community-driven," she said. The bill, however, would cover homes throughout Philadelphia.

Some residents who experience construction directly next to their homes don't know where to turn for answers. Not everyone has to deal with issues, but when a build starts to affect neighboring properties,

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there can be cause for alarm.

Venise Castaneda-Whitaker wants all Philadelphians to know how to spot dangerous construction and demolition practices. She started a private Facebook group called "Riverwards L+I Coalition" after a home collapsed in Fishtown to educate neighbors and herself about the ins and outs of building codes, construction law, and much more. The group acts almost like a free tutorial with neighbors and experts helping each other.

"It helps when someone breaks it down for you," she said. "When I started this, I never realized that we really don't have many rights as homeowners or home occupiers when construction happens."

In the case of the collapsed Fishtown house that motivated Castaneda-Whitaker to create the group, the contractors weren't operating with permits at all. Unfortunately, the proposed City Council bill can't protect against builders who work without authorization.

Advocates for the bill would like to see more protections passed as laws that could serve as a "Neighbors Bill of Rights." As it currently stands, seeking compensation for damages is generally a matter for civil court and not everyone can afford legal fees.

On many occasions, members of the coalition's Facebook group have filed service requests with 311, the city's municipal services hotline, in response to issues caused by adjacent construction. In addition to

311's phone service, there's also an app and a website that allows residents to upload photos and other documentation. The Department of Licenses and Inspections is only one of the several departments to which 311 connects Philadelphia residents.

Drew Miller, who's advocated for himself and neighbors against unsafe construction, said he'd like to see more collaboration between city departments, especially before project permits are approved.

"Most of the oversight only kicks in after something bad has already happened," Miller said. One step such as closing out a demolition permit, which then allows for a building permit to be approved, sometimes happens without an adequate inspection. That means the city has signed off on the work and builders are given a green light. Miller said he's seen that scenario play out in several instances.

Miller started educating himself with the help of the coalition. He has even come to represent his neighbors' interests in a Pennsylvania Senate hearing. He volunteers by helping neighbors who don't know what to do while facing construction and demolition issues. Sometimes that means pointing out best practices when filing a 311 request or networking with experts who are willing to lend a hand. He also said he sympathizes with the city's seemingly understaffed and overworked L&I.

According to the city's open data tracker, L&I currently has 69,529 open requests or complaints, and roughly 32% of those pertain to building structures, licenses, and construction. The department can force