

**CITY OF BASTROP, TEXAS**

**ORDINANCE NO. 2023-09**

**AMENDING CODE OF ORDINANCES**

**AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE BASTROP CODE OF ORDINANCES CHAPTER 3 BUILDING REGULATIONS, ARTICLE 3.17 FLOOD DAMAGE PREVENTION; AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING; AND ESTABLISHING FOR AN EFFECTIVE DATE.**

**WHEREAS,** pursuant to Texas Local Government Code Section 51.001, the City Council of the City of Bastrop ("City") has general authority to adopt an ordinance or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS,** the City Council finds that there is a local need for flood insurance and desires to continue to participate in the National Flood Insurance Program ("NFIP"); and

**WHEREAS,** a Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) have been completed for Bastrop County, Texas and incorporated areas and will become effective on May 9, 2023; and

**WHEREAS,** the City Council intends to recognize and duly evaluate flood hazards in all official actions in the areas having special flood hazards and to take such other official action reasonably necessary to carry out the objectives of the program including enacting and enforcing local floodplain management standards consistent with NFIP minimum criteria; and

**WHEREAS,** the City Council finds certain amendments to the aforementioned codes are necessary to meet changing conditions and are in the best interest of the City; and

**WHEREAS,** the City Council finds the attached amendments reasonable and necessary.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Bastrop, Texas:

### **1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

### **2. AMENDMENT**

The Bastrop Code of Ordinances Chapter 3 Building Regulations, Article 3.17 Flood Damage Prevention is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. The City Council hereby adopts and references the related Federal Emergency Management Agency ("FEMA") documents including, but not limited to, the Flood Insurance Rate Maps and Flood Insurance Study.

### **3. REPEALER**

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

### **4. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

### **5. CODIFICATION**

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

## 6. EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

## 7. PROPER NOTICE AND MEETING

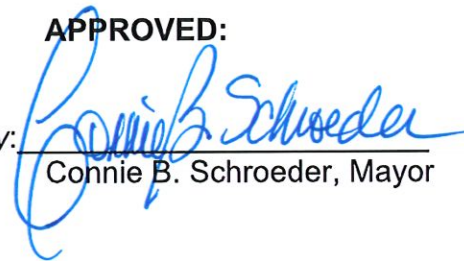
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**READ & ACKNOWLEDGED** on First Reading on this, the 11<sup>th</sup> day of April 2023.


**READ & APPROVED** on the Second Reading on this, the 25<sup>th</sup> day of April 2023.

**APPROVED:**

by:

  
Connie B. Schroeder, Mayor

**ATTEST:**

  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
Alan Bojorquez, City Attorney

**ATTACHMENT A**

## ARTICLE 3.17 FLOOD DAMAGE PREVENTION

### Sec. 3.17.001 Statutory authorization.

The legislature of the state has in Civil Statutes delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council, of the City of Bastrop, Bastrop, Texas, does ordain as follows.

### Sec. 3.17.002 Findings of fact.

- (a) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage.

### Sec. 3.17.003 Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and
- (7) Ensure that potential buyers are notified that property is in a flood area.

### Sec. 3.17.004 Methods of reducing flood losses.

In order to accomplish its purposes, this article uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

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- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
  - (4) Control filling, grading, dredging and other development which may increase flood damage;
  - (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

### **Sec. 3.17.005 Definitions.**

Unless specifically defined below, words or phrases used in this article shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application.

*Alluvial fan flooding.* Flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

*Apex.* A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

*Appurtenant structure.* A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

*Area of future conditions flood hazard.* The land area that would be inundated by the 1-percent-annual chance (100-year) flood based on future conditions hydrology.

*Area of shallow flooding.* A designated AO, AH, AR/AO, AR/AH or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent (1%) chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of special flood hazard.* The land in the floodplain within a community subject to a one-percent (1%) or greater chance of flooding in any given year. The area may be designated as zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate-making has been completed in preparation for publication of the FIRM, zone A usually is refined into Zones A, AE, AH, AO, A1-30, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

*Base flood.* The flood having a 1-percent chance of being equaled or exceeded in any given year.

*Base Flood Elevation (BFE).* The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one percent (1%) chance of equaling or exceeding that level in any given year - also called the Base Flood.

*Basement.* Any area of the building having its floor subgrade (below ground level) on all sides.

*Breakaway wall.* A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

*Critical feature.* An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

*Development.* Any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.

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*Elevated building.* For insurance purposes, a non-basement building which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

*Existing construction.* For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

*Existing manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

*Expansion to an existing manufactured home park or subdivision.* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*Flood or Flooding.* A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual and rapid accumulation of runoff or surface waters from any source.

*Flood Elevation Study.* An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

*Flood Insurance Rate Map (FIRM).* An official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

*Flood Insurance Study (FIS).* See Flood Elevation Study.

*Floodplain or Flood-Prone Area.* Any land area susceptible to being inundated by water from any source (see definition of Flooding).

*Floodplain Management.* The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

*Floodplain Management Regulations.* Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

*Flood Protection System.* Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

*Flood Proofing.* Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Floodway.* See Regulatory Floodway.

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*Functionally dependent use.* A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Highest adjacent grade.* The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure.* Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
  - (A) By an approved state program as determined by the Secretary of the Interior; or
  - (B) Directly by the Secretary of the Interior in states without approved programs.

*Levee.* A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

*Levee system.* A flood protection system which consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest floor.* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

*Manufactured home.* A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

*Manufactured home park or subdivision.* A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*Mean sea level.* For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

*New construction.* For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes "new construction" means structures for which the "start of construction" commenced on or after the effective date of a



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floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

*New manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

*Recreational vehicle.* A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Regulatory floodway.* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*Riverine.* Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*Special Flood Hazard Area.* See area of Special Flood Hazard.

*Start of construction.* (For other than new construction or substantial improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure.* For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*Substantial damage.* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

*Substantial improvement.* Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

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- (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

*Variance.* A grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

*Violation.* The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

*Water Surface Elevation.* The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **Sec. 3.17.006 General provisions.**

- (a) *Lands to which these provisions apply.* These provisions shall apply to all areas of special flood hazard within the jurisdiction of the city.
- (b) *Basis for establishing the areas of special flood hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Bastrop County, Texas and incorporated areas", dated May 9, 2023, with the accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary-Floodway Maps (FBFMs) dated May 9, 2023 and any revisions thereto are hereby adopted by reference and declared to be a part of this article.
- (c) *Establishment of development permit.* A floodplain development permit shall be required to ensure conformance with the provisions of this article.
- (d) *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this article and other applicable regulations.
- (e) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) *Interpretation.* In the interpretation and application of this article, all provisions shall be:
- (1) Considered as minimum requirements;
  - (2) Liberally construed in favor of the governing body; and
  - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) *Warning and disclaimer of liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on these provisions or any administrative decision lawfully made thereunder.

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**Sec. 3.17.007 Administration.**

- (a) *Designation of the Floodplain Administrator.* The City Manager, or their designee, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this article and other appropriate Sections of 44 CFR (Emergency Management and Assistance National Flood Insurance Program regulations) pertaining to floodplain management.
- (b) *Duties and responsibilities of floodplain administrator.* Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this article.
  - (2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
  - (3) Review, approve or deny all applications for development permits required by adoption of this article.
  - (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
  - (5) 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.
  - (6) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
  - (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
  - (8) When base flood elevation data has not been provided in accordance with Section 3.17.006(b), 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 3.17.008.
  - (9) When a 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 community'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 foot at any point within the community.
  - (10) Under the provisions of 44 CFR chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by Section 65.12.
- (c) *Permit procedures.*
- (1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the locations, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the

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foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (A) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
  - (B) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
  - (C) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 3.17.008(b)(2);
  - (D) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
  - (E) Maintain a record of all such information in accordance with subsection (b)(1).
- (2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this article and the following relevant factors:
- (A) The danger to life and property due to flooding or erosion damage;
  - (B) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (C) The danger that materials may be swept onto other lands to the injury of others;
  - (D) The compatibility of the proposed use with existing and anticipated development;
  - (E) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (F) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
  - (G) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
  - (H) The necessity to the facility of a waterfront location, where applicable;
  - (I) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(d) *Variance procedures.*

- (1) The Appeal Board, of the City Council, shall hear and render judgment on requests for variances from the requirements of this article.
- (2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.
- (3) Any person or persons aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

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- (5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this article.
  - (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection (c)(2) above, in this article, have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.
  - (7) Upon consideration of the factors noted above and the intent of this article, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of Section 3.17.003 of this article.
  - (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  - (9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  - (10) Prerequisites for granting variances:
    - (A) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
    - (B) Variances shall only be issued upon:
      - (i) Showing a good and sufficient cause;
      - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
      - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
    - (C) Any applicant to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
  - (11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
    - (A) The criteria outlined in subsections (1) through (10) are met; and
    - (B) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. No. 2019-05 , § 1, 4-9-19)

### **Sec. 3.17.008 Provisions for flood hazard reduction.**

- (a) *General standards.* In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

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- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
  - (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
  - (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  - (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters; and
  - (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (b) *Specific standards.* In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 3.17.007(b)(8), and subsection (c)(3) of this section, the following provisions are required:
- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the Floodplain Administrator that these standards as proposed in Section 3.17.007(c)(1)(A) are satisfied.
  - (2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to two (2) feet above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.
  - (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
    - (A) A minimum of two (2) openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - (B) The bottom of all openings shall be no higher than one foot above grade.

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- (C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) *Manufactured homes.*
- (A) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (B) Require that all manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the city's FIRM on sites:
- (i) Outside of a manufactured home park or subdivision;
  - (ii) In a new manufactured home park or subdivision;
  - (iii) In an expansion to an existing manufactured home park or subdivision; or
  - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to two (2) feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (C) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of subsection (b)(4) of this section be elevated so that either:
- (i) The lowest floor of the manufactured home is two (2) feet above the base flood elevation; or
  - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (5) *Recreational vehicles.* Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
- (A) Be on the site for fewer than one hundred eighty (180) consecutive days; or
  - (B) Be fully licensed and ready for highway use; or
  - (C) Meet the permit requirements of Section 3.17.007(c)(1) of this article, and the elevation and anchoring requirements for "manufactured homes" in subsection (b)(4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(c) *Standards for subdivision proposals.*

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 3.17.002, 3.17.003, and 3.17.004 of this article.

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- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Sections 3.17.006(c) and 3.17.007(c) and the provisions of this article.
  - (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Section 3.17.006(b) or Section 3.17.007(b)(8) of this article.
  - (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
  - (5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- (d) *Standards for areas of shallow flooding (AO/AH zones).* Located within the areas of special flood hazard established in Section 3.17.006(b) of this article are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:
- (1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation or above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
  - (2) All new construction and substantial improvements of **non-residential** structures:
    - (A) Have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation or above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified); or
    - (B) Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO zone, or below the Base Flood Elevation in an AH zone level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads or effects of buoyancy.
  - (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in Section 3.17.007(c)(1)(A) are satisfied.
  - (4) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.
- (e) *Floodways.* Floodways located within areas of special flood hazard established in Section 3.17.006(b) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:
- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.



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- (2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.
  - (3) Under the provisions of 44 CFR chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

(Ord. No. 2005-45, 12-13-05)