

**ORDINANCE NO. 18-17**  
**AN ORDINANCE AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES  
OF THE CITY OF BROWNWOOD IN ITS ENTIRETY ESTABLISHING FLOOD  
DAMAGE PREVENTION REGULATIONS; PROVIDING PENALTIES FOR  
VIOLATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR  
AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 82 of the Code of Ordinances contains the City's current flood damage prevention regulations; and

**WHEREAS**, to comply with National Flood Insurance Program, the City must update its flood prevention regulations;

**WHEREAS**, the City Council desires to enact this ordinance updating its flood prevention regulations to comply with the new regulations of the National Flood Insurance Program.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROWNWOOD TEXAS, AS FOLLOWS:**

**Section One.** Chapter 82 - Floods, is hereby amended in its entirety to read as follows:

"Chapter 82 - FLOODS

**ARTICLE I. - IN GENERAL**

**Secs. 82-1—82-29. - Reserved.**

**ARTICLE II. - FLOOD DAMAGE PREVENTION**

**DIVISION 1. - GENERALLY**

**Sec. 82-30. - Statutory authorization.**

The Legislature of the State of Texas has in the Flood Control Insurance Act, V.T.C.A., Texas Water Code § 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Brownwood, Texas does ordain as follows:

**Sec. 82-31. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alluvial Fan Flooding* - means 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*- means 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.

*Appeal* means a request for a review of the city planner/building official's interpretation of any provision of this article or a request for a variance.

*Appurtenant structure* means 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* – means 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* means a designated AO, AH, AR/AO, or AR/AH zone on the city's flood insurance rate map (FIRM), with base flood depths range from one to three feet. Such conditions occurs where a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of special flood hazard* means the land in the floodplain within the city subject to a one percent 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, AO, AH, AE, A99, AR, AR/AE, AR/AO, AR/AH, AR/A, VO, VE or V.

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year.

*Base flood elevation (BFE)* means the elevation shown on the flood insurance rate map (FIRM) and found in the accompanying flood insurance study (FIS) for zones A, AE, AH, AO, A1-A30, A99, or AR, that indicates the water surface elevation resulting from the flood that has a one percent chance of equaling or exceeding that level in any given year (also called the base flood).

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

*Breakaway Wall* – means 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* means 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* means 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.

*Elevated building* means, for insurance purposes, a non-basement building which has it's lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns:

- (1) In the case of a building in zones A, AE, A99, AO, AH, AR, V, VE, X and D, to have the top of the elevated floor, or in the case of a building in zones VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor:
  - a. Elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the floor of the water; and
  - b. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

- (2) In the case of zones AE, A, A99, AO, AR, AH, V, VE, X and D, also, a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. No fill or solid perimeter walls are allowed in a V or VE Zone.
- (3) In the case of zones VE or V, also, a building otherwise meeting the definition of an "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of 44 CFR 60.3(e)(5) of the National Flood Insurance Program regulations.

*Existing construction and existing structure* means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the flood insurance rate map (FIRM) or before January 1, 1975, for the FIRMs effective before such date.

*Existing Manufactured Home Park or Subdivision* - means 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* - means 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* means a general and temporary condition of partial or complete inundation of normally dry land areas from the:

- (1) Overflow of inland or tidal waters.
- (2) Unusual and rapid accumulation or runoff of surface waters from any source.

*Flood Elevation Study* – means 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)* means 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 for the community.

*Flood insurance study (FIS)* – See Flood Elevation Study

*Flood Proofing* - means any combination of structural and non-structural 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.

*Flood protection system* means the physical structural works for which funds have been authorized, appropriated and expended and which have been specifically constructed to modify flooding in order to reduce the extent of the areas within the city 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. Such specialized flood modifying works are those constructed in conformance with sound engineering standards.

*Floodplain* and *flood-prone area* mean any land area susceptible to being inundated by water from any source. See the definition of *Flood*.

*Floodplain management* means 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* - means 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.

*Floodway* means 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.

*Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. Such 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.

*Habitable floor* means any floor usable for the purpose of working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used for storage purposes only is not a habitable floor.

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

*Historic Structure* - means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of 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 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 of 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* means 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* means a flood protection system consisting of a levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

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

*Manufactured home* means 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 attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

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

*Mean sea level* means, 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 the city's flood insurance rate map are referenced.

*New Construction* - means, 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 floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

*New Manufactured Home Park or Subdivision* - means 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 floodplain management regulations adopted by a community.

*Program deficiency* means a defect in the city's floodplain management regulations or administrative procedures that impairs effective implementation of the floodplain management regulations.

*Recreational Vehicle* - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Regulatory Floodway* - means 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.

*Remedy a violation* means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

*Riverine* – means 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* and *start of substantial improvement* mean the date the building permit was issued, provided, the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement was within 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 the 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 a basement, footings, piers, 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* means for floodplain management purposes, a walled and roofed building including a gas or liquid storage tank which is principally above the ground, as well as a manufactured home.

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

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 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 (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

*Variance* means 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* means the failure of a structure or other development to be fully compliant with the city's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as the documentation is provided.

*Water surface elevation* means 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. 82-32. - Findings of fact.**

- (a) The flood hazard areas of the City of Brownwood 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 caused 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. 82-33. - Purpose; methods of accomplishment.**

- (a) *Statement.* 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 floodprone 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.
- (b) *Methods of accomplishment.* The following methods are used in order to accomplish the purposes of this article:
  - (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;
  - (3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;
  - (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 flood waters or which may increase flood hazards to other lands.

**Sec. 82-34. - 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 city council; and
- (3) Deemed neither to limit, nor repeal any other powers granted under state statutes.

**Sec. 82-35. - Applicability.**

This article shall apply to all areas of special flood hazard within the jurisdiction of the City of Brownwood and its Extraterritorial Jurisdiction (ETJ).

**Sec. 82-36. - Compliance required.**

No structure or land shall be located, altered or have its use changed without full compliance with the terms of this article and other applicable regulations.

**Sec. 82-37. - 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 for Brown County and incorporated Areas" (FIS), effective date August 28, 2018, with accompanying Flood Insurance Rate Maps (FIRM), effective date August 28, 2018, and any revisions thereto, is hereby adopted by reference and declared to be a part of this ordinance. The flood insurance study is on file at Brownwood City Hall, 501 Center, Brownwood, Texas.

**Sec. 82-38. - 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. Greater floods can and will occur on rare occasions, and flood heights may be increased by manmade or natural causes. This article does not imply that land outside the area 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 city or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made under this article.

**Sec. 82-39. - 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.

**Sec. 82-40. - Violations; Penalties for Non-Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations. Violations of the provisions of this article by failure to comply with any of the requirements of this article, including violations of conditions and safeguards established in connection with such conditions, shall constitute a misdemeanor, and shall be fined as set forth in section 1-14. Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation of this article.

**Secs. 82-41—82-60. - Reserved.**

**DIVISION 2. - ADMINISTRATION AND ENFORCEMENT\***

**Sec. 82-61. - Administrator.**

The city's floodplain administrator, or his designated representative, is hereby appointed to administer and implement this article and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management by granting or denying development permit applications in accordance with its provisions.

**Sec. 82-62. - Duties and responsibilities of floodplain administrator.**

Duties of the floodplain administrator shall include, but are not limited to:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.



- (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 of all development permit applications to determine that the permit requirements of this article have been satisfied.
- (4) Review, approve or deny all applications for development permits required by adoption of this ordinance.
- (5) Review all development permit applications to determine that all necessary permits have been obtained from the federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344) from which prior approval is required.
- (6) 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.
- (7) Review all development permit applications to determine if the proposed development is located in the floodway; if located in the floodway, ensure that the encroachment provisions of subsection 82-113(a) are met.
- (8) When all items have been satisfied, issue development permits and maintain records of the permit.
- (9) When base flood elevation data has not been provided in accordance with section 82-37, obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer subsections 82-112(1) and (2).
- (10) Obtain and maintain the following information on record:
  - a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  - b. For all new substantially improved floodproofed structures:
    1. Verify and record the actual elevation (in relation to mean sea level);
    2. Maintain the floodproofing certifications required in subsection 82-82(3); and
    3. Maintain and hold open for public inspection all records pertaining to the provisions of this article.
- (11) If a permit application proposes a stream alteration:
  - a. Notify, in riverine situations, adjacent communities, the Texas Commission on Environmental Quality, and the Texas Water Development Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to Federal Emergency Management Agency.
  - b. Require that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.
- (12) Should the FIS and FIRM showing areas of special flood hazard not be detailed enough to reflect all site conditions, make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards. Should the floodplain administrator determine

that the property is outside the area of special flood hazard, the property owner would then not have to satisfy the floodplain management requirements set forth in this article. If the floodplain administrator should determine that the property is within the floodplain boundary and the property owner disagrees, the person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation, as provided in subsection 82-63(a).

- (13) 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 A and AE on the city'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 city.
- (14) 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 A, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community **first** completes all of the provisions required by Section 65.12.

#### **Sec. 82-63. - Appeals and variances.**

##### *(a) Appeal board.*

- (1) The appeal board, as established by the city, shall hear and render judgment on appeals and 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 aggrieved by the decision of the appeal board may appeal the decision in the courts of competent jurisdiction.
- (4) In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and the:
  - a. Danger that materials may be swept onto other lands to the injury of others;
  - b. Danger to life and property due to flooding or erosion damage;
  - c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. Importance of the services provided by the proposed facility to the city;
  - e. Necessity to the facility of a waterfront location, where applicable;
  - f. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. Compatibility of the proposed use with existing and anticipated development;
  - h. Safety of access to the property in times of flood for ordinary and emergency vehicles;
  - i. Relationship of the proposed use to the comprehensive plan and floodplain management program of the area;
  - j. Expected heights, velocity, duration, rate of rise and action, if applicable, at the expected site; and

- k. Cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) Upon consideration of the factors of subsection (a)(4) of this section and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
- (6) The Floodplain Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency, upon request.
- (b) *Conditions for variances.*
  - (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided subsections (a)(4)a.—k. of this section has been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
  - (2) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Article 1, Section C).
  - (3) 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 section.
  - (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  - (5) 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.
  - (6) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (7) Variances shall only be issued upon a:
    - a. Showing of good and sufficient cause;
    - b. Determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    - c. 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 as identified in subsection (a)(4) of this section, or conflict with existing local laws or ordinances.
  - (8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a 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.

- (9) 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 (i) the criteria outlined in Article 4, Section D (1)-(9) are met, and (ii) 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.

**Secs. 82-64—82-80. - Reserved.**

**DIVISION 3. - PERMITS**

**Sec. 82-81. - Development permit required.**

A Floodplain development permit shall be required to ensure conformance with the provisions of this article.

**Sec. 82-82. - Application; required information.**

A Floodplain development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 82-37. Application for a Floodplain development permit shall be made on forms furnished by the Floodplain Administrator, and may include, but not be limited to, plans in duplicate, drawn to scale, showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, including the placement of manufactured homes, fill, storage of materials and drainage facilities; and the location of thereof. The following information shall be required specifically:

- (1) Elevation, in relation to mean sea level, of the lowest floor, including basement, of all new and substantially improved structures;
  - (2) Elevation, in relation to mean sea level, to which any structure has been floodproofed;
  - (3) Certification by a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in subsection 82-112(2);
  - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of the proposed development.
- (5) Maintain a record of all such information in accordance with Section 82-62 (1);

**Sec. 82-83. – Action.**

Following the filing of a written application for a development permit with the Floodplain Administrator, such application shall be acted upon within:

- (1) Ten working days, if in an area of special flood hazard;
  - (2) Twenty working days, if in a floodway.
- (3) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance 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.

**Sec. 82-84. - Denial.**

If the Floodplain Administrator denies the granting of a permit, the denial shall be in writing, specifically setting forth the reasons that the development permit is denied. It is intended that the written denial will point out to the applicant how he has failed to be entitled to a development permit in a manner so that the applicant can reasonably determine the reasons for the denial, and to give the applicant an opportunity to provide additional material and information required, or provide additional drainage facilities, in a subsequent application.

**Sec. 82-85. - Appeal.**

Any person whose application for a development permit is denied may appeal the decision to the appeal board by giving written notice to the Floodplain Administrator within 30 days of the Floodplain Administrator's denial of the application for the development permit. The appeal board shall hear the appeal within 20 days of the filing of the notice of appeal and shall render its written decision to grant or deny the development permit within three days following the hearing.

**Secs. 82-86—82-110. - Reserved.**

**DIVISION 4. - STANDARDS FOR FLOOD HAZARD REDUCTION**

**Sec. 82-111. - General standards.**

In all areas of special flood hazard, the following standards are required for all new construction and substantial improvements:

- (1) *Anchoring.* All new construction and substantial improvements including manufactured homes 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) *Construction materials and methods.*

- a. All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) *Utilities.*

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system by the installation of an RP valve or equal;
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters by the installation of a backwater valve or equal;
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
- d. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**Sec. 82-112. - Specific standards.**

In all areas of special flood hazard, where basic flood elevation data has been provided as set forth in section 82-37 or subsection 82-62(4), the following standards are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot above base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this division as proposed in subsection 82-82(1) is satisfied.
- (2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to one foot above base flood elevation or, together with attendant utility and sanitary facilities, shall:
  - a. Be floodproofed so that one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - c. Have had a registered professional engineer or architect develop and/or review structural design, specifications and plans for the construction, and certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this section. A record of the certification, which includes the specific elevation, in relation to mean sea level, to which the structures are floodproofed shall be maintained by the Floodplain Administrator.
- (3) *Enclosure.* For all new construction and substantial improvements, fully enclosed areas below the lowest floor that 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 such requirement must either be certified by a

registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two 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; and
- 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. All manufactured homes to be placed within zone A or AE on the City's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of such 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. Such requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. All manufactured homes to be placed or substantially improved within zones A, 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, shall be required to be elevated on a permanent foundation so that the lowest floor of the manufactured home is one foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist floatation, collapse and lateral movement in accordance with subsection 82-111(1).
- 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 paragraph (4) of this section be elevated so that either:

(i) the lowest floor of the manufactured home is one foot 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 36 inches in height above grade, whichever is greater, 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 A, AH and AE on the community's FIRM either: (i) be on the site for fewer than 180 consecutive days; or (ii) be fully licensed and ready for highway use; or (iii) meet the permit requirements of section 82-82, and the elevation and anchoring requirements for "manufactured homes" in subsection (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.

**Sec. 82-113. - Standards for subdivision proposals.**

- (a) All subdivision proposals, including manufactured home parks and subdivisions, shall be consistent with the need to minimize floodplain damage as depicted in Sec. 82-32 and 82-33.

- (b) All subdivision proposals, including manufactured home parks and subdivisions, shall have public utilities and facilities, such as sewer, gas, and electrical and water systems, located and constructed to minimize or eliminate flood damage.
- (c) All subdivision proposals, including manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood damage.
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development, including manufactured home parks and subdivisions, which contain at least 50 lots or five acres, whichever is less.
- (e) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Division 3, Section 82-81 and 82-82; and the provisions of Division 4 of this ordinance.

**Sec. 82-114. - Standards for areas of shallow flooding (AO/AH zones).**

- (a) Located within areas of special flood hazard established in section 82-37 are areas designated as shallow flooding. Such areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist, the path of flooding is unpredictable and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:
- (b) Such flooding is characterized by ponding or sheet flow; therefore, the following provisions shall apply:
  - (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated one foot above the base flood elevation or above the highest adjacent grade at least as high as the depth number specified in feet on the city's FIRM (at least two feet if no depth number is specified).
  - (2) All new construction and substantial improvements of nonresidential structures:
    - a. Shall have the lowest floor, including basement, elevated 1 foot above the base flood elevation or above the highest adjacent grade at least as high as the depth number specified in feet on the city's FIRM (at least two feet if no depth number is specified); or
    - b. Together with attendant utility and sanitary facilities, shall be designed so that below the base flood level in an AO zone, or below the base flood elevation in an AE zone, 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 article, as proposed in section 82-82, are satisfied.
  - (4) Within zones AH or AO, adequate drainage paths shall be required around structures on slopes to guide floodwaters around and away from proposed structures.

**Sec. 82-115. - Floodways.**

- (a) Located within areas of special flood hazard established in section 82-37 are areas designated as floodways.
- (b) 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 and certification by a professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. The city shall weigh the impact should all adjacent property owners wish to develop their property to the same degree as the applicant.
- (2) If subsection (b)(1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this division.
- (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.”

## **Section Two. Miscellaneous.**

(1) Penalty. Any person violating any part of this ordinance or failing to observe any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00). Each occurrence of a violation of this ordinance shall be deemed a separate offense.

(2) Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this ordinance shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases and words of this ordinance since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional or invalid portion of the ordinance.

(3) Effective Date. This ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED** on First Reading this the 24<sup>th</sup> day of July, 2018.

**PASSED AND APPROVED** on Second Reading this the 14<sup>th</sup> day of August, 2018.

**PASSED AND APPROVED** on Third/Final Reading this the 14<sup>th</sup> day of August, 2018.

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**STEPHEN E. HAYNES**, Mayor

**ATTEST:**

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**CHRISTI WYNN**, City Secretary

**APPROVED AS TO FORM:**

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**PAT CHESSER**, City Attorney