

ORDINANCE NO. 3862-A

AN ORDINANCE AMENDING THE CITY OF MUSKOGEE CODE OF ORDINANCES BY REPEALLING CHAPTER 90, ZONING, ARTICLE XIII, FLOOD DAMAGE PREVENTION, SECTIONS 90-1117 THROUGH 90-1134 AND BY ADDING CHAPTER 64, MUSKOGEE STORM WATER MANAGEMENT REGULATION, ARTICLE III, FLOOD DAMAGE PREVENTION, SECTION 64-60, STATEMENT OF PURPOSE, SECTION 64-61, FINDINGS OF FACT, SECTION 64-62, METHODS OF REDUCING FLOOD LOSS, SECTION 64-63, DEFINITIONS, SECTION 64-64, APPLICABILITY, COMPLIANCE WITH AND INTERPRETATION OF ARTICLE PROVISIONS, SECTION 64-65, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, SECTION 64-66, ESTABLISHMENT OF FLOOD PLAIN PERMIT, SECTION 64-67, WARNING AND DISCLAIMER OF LIABILITY, SECTION 64-68, DESIGNATION OF FLOODPLAIN ADMINISTRATOR, SECTION 64-69, DESIGNATION OF FLOODPLAIN PERMIT COMMITTEE, DUTIES AND RESPONSIBILITIES, SECTION 64-70, PERMIT PROCEDURES; APPROVAL OR DENIAL, SECTION 64-71, VARIANCE AND APPEAL, SECTION 64-72, GENERAL STANDARDS FOR FLOOD HAZARD AREAS, SECTION 64-73, SPECIFIC STANDARDS FOR FLOOD HAZARD AREAS, SECTION 64-74, FLOODWAYS, SECTION 64-75, STANDARDS FOR SUBDIVISION PROPOSALS, FLOOD HAZARD AREAS AND SECTION 64-76, PENALTIES FOR NONCOMPLIANCE; BY PROVIDING FOR CODIFICATION, REPEALER. SEVERABILITY AND DECLARING AND EMERGENCY.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHHOMA, AS FOLLOWS:

EMERGENCY ORDINANCE

Section 1. The City of Muskogee Code of Ordinances, Chapter 90, Zoning, Article XIII, Flood Damage Prevention, Sections 90-1117 through 90-1134, are hereby repealed:

Section 2. The City of Muskogee Code of Ordinances, Chapter 64, Flood Damage Prevention, is hereby amended by adding Article III, Flood Damage Prevention, Sections, to read as follows:

ARTICLE III. FLOOD DAMAGE PREVENTION

Sec. 64-60. 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;

- (7) Ensure that potential buyers are notified that the property is in a flood area; and
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Sec. 64-61. Findings of fact.

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. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to other lands because they are inadequately elevated, flood proofed, or otherwise protected from flood damage.

Sec. 64-62. Methods of reducing flood losses.

In order to accomplish its purposes, these regulations are established to:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property due to water, water-related or erosion hazards, or that result in damaging increases in erosion or in flood heights, widths or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage throughout their intended lifespan;
- (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, excavating, vegetation removal, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert or restrict floodwaters or which may increase flood hazards in other areas, whether adjacent upstream or downstream.

Sec. 64-63. 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:

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article or a request for a variance.

Area of special flood hazard means the land in the floodplain within a community 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 Insurance Rate Map (FIRM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A or AE.

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) for Zones that indicate the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

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

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 in improved and 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 a nonbasement building:

- (1) Built, in Zones AE, A, & X, to have the top of the elevated floor at or above the Base Flood Elevation and, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water; and
- (2) 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. In the case of Zones AE, A, or X, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

Existing construction means, for the purpose 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 means the construction of the 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:

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

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

Flood insurance study means the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, as well as the flood boundary-floodway map.

Floodplain or flood prone area means any land area susceptible to being inundated by water from any source. See Flood or flooding. *Floodplain Administrator* means a person accredited by the OWRB and designated by the City Council to administer and implement laws, ordinances and regulations relating to the management of floodplains.

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, grading, and erosion control ordinance) and other applications of police power. The term "floodplain management

regulations" describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reductions.

Floodplain permit application means the official form used for application to the floodplain permit committee for all proposed development in areas of special flood hazard. A completed and approved floodplain development application is required before any development may be considered for review and approval in the manner prescribed for such development.

Floodplain permit committee means the designated administrative authority for administering the city's floodplain management provisions.

Flood protection system means 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 areas 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.

Floodway or regulatory floodway means the channel of a river, creek, 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.

Flood zone(s) defined as:

- (1) Zone A means an area inundated by the 1% annual chance flood, for which no BFEs have been established.
- (2) Zone AE means an area inundated by the 1% annual chance flood, for which BFEs have been determined.
- (3) Zone X means areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent use" includes only docking facilities, and 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 living purposes, which includes 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.

Historical 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 Interior as meeting the requirements for individual listing on the National Register of Historic Places;
- (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 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 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 Interior; or
- (b) Directly by the Secretary of 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 which consists 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 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 nonelevation design requirement of 44 CFR 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 connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. 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 current National Geodetic Vertical Datum (NGVD) or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, for floodplain management purposes, structures for which the start of construction commenced on or after the effective date of Ordinance No. 1435-A of the city.

New manufactured home park or subdivision means 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.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred 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.

Start of construction 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 180 days of the permit date. The term "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 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 means a walled or roofed building, including a gas or liquid storage tank that is principally above 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 before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement.

- (1) The term 'substantial improvement' means any repair, 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 includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:
 - a. 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 conditions; or
 - b. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure;
- (2) For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term "substantial improvement" does not, however, include either:
 - a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to ensure safe living conditions; or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places; and

Use means any actual or anticipated utilization or change in utilization of real property and specifically shall include, but shall not be limited to, any request or application for a zoning change.

Variance means a grant of relief to a person from the requirements of this article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this article. For full requirements, see 44 CFR 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 community's floodplain management regulations. A structure, or other development, without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR

60.3(b)(5), (c)(4), (c)(10) or (d)(3) of the National Flood Insurance Program Regulations, is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the current National Geodetic Vertical Datum (NGVD) or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 64-64. Applicability; compliance with and interpretation of article provisions.

- (1) This article shall apply to all areas of special flood hazard within the jurisdiction of the city.
- (2) 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.
- (3) This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (4) In the interpretation and application of this article all provisions shall be:
 - (a) Considered as minimum requirements;
 - (b) Liberally construed in favor of the council; and
 - (c) Deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 64-65. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific engineering report entitled, The Flood Insurance Study for Muskogee County, Oklahoma, and Incorporated Areas, dated February 4, 2011, with the accompanying Flood Insurance Rate Map (FIRM), are hereby adopted by reference and declared to be a part of these regulations.

Sec. 64-66. Establishment of floodplain permit.

A floodplain permit shall be required to ensure conformance with the provisions of this article. A floodplain permit shall be obtained before any construction, zoning change, change in use, or development begins, or any required drawing approval or building permit is issued within any area of special flood hazard.

Sec. 64-67. 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 city or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

Sec. 64-68. Designation of Floodplain Administrator.

The Director of Planning is hereby appointed the Floodplain Administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Code of Federal Regulations/National Flood Insurance Program Regulations) pertaining to floodplain management.

Sec. 64-69. Designation of Floodplain Permit Committee; duties and responsibilities.

- (1) The Director of Planning, Director of Public Works and the Assistant Director of Public Works/Utilities are hereby appointed to serve as the Floodplain Permit Committee and are authorized and instructed to implement and administer this article by granting or denying floodplain permit applications in accordance with its provisions.
 - (a) The Director of Planning shall serve as chairman of the committee and shall call meetings of the committee as required to review and pass on floodplain permit applications;
 - (b) A unanimous approval of the committee shall be required to grant a floodplain permit; and
 - (c) The committee may defer action on any floodplain permit application and require the applicant or his engineer or architect to provide such revised or additional information as deemed necessary to render a final decision.
- (2) Duties and responsibilities of the floodplain permit committee shall include, but not be limited to, the following:
 - (a) Maintain and hold open for public inspection all records pertaining to the provisions of this article;
 - (b) Review permit applications to determine whether proposed building sites will be reasonably safe from flooding;
 - (c) Review, approve or deny all applications for development permits required by adoption of this article;
 - (d) Review permits for proposed development to ensure 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 USC 1251 et seq.) from which prior approval is required;
 - (e) Make the necessary interpretation 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 conflict between a mapped boundary and actual field conditions);
 - (f) Notify, in riverine situations, adjacent communities and the State Water Resources Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Administration;
 - (g) Ensure that flood carrying capacity within the altered or relocated portion of the watercourse is maintained;
 - (h) When base flood elevation data has not been provided in accordance with Section 64-65, 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 Sections 64-72 through 64-74;
 - (i) In unnumbered A zones (flood hazard areas without base flood elevations where it is required that you use the best available data), require one of the following actions as a condition of a permit:
 1. Determine an elevation from the nearest benchmark outside of the flood hazard area and require the lowest floor of the structure in the unnumbered A zone to be one foot or more above such elevation;

2. Where flooding history is greater than the elevation specified in Subsection (2)(i)1 of this section, require the lowest floor elevation to be one foot or more above such elevation;
 3. Require elevation of the lowest floor to be two or more feet above the highest adjacent grade next to the building site;
 4. Require that the lowest floor elevation be one foot or more above the base flood elevation which is the elevation of the nearest benchmark outside of the flood hazard area; or
 5. When a regulatory floodway has not been designated, the floodplain permit committee must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone 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; and
- (j) Under the provisions of 44 CFR 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zone AE 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 applies for a conditional FIRM revision through FEMA; and
- (k) Become accredited by the OWRB in accordance with Title 82 O.S. § 1601-1618, as amended.

Sec. 64-70. Permit procedures; approval or denial.

- (1) Application for a floodplain permit shall be presented to the Floodplain Permit Committee on forms developed by it and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, and the location of the 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) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (c) Maintain a record of all such information in accordance with this article.
- (2) Approval or denial of a floodplain permit by the Floodplain Permit Committee 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;
- (j) The relationship of the proposed use to the comprehensive plan for that area; and
- (k) Plans shall be sealed by a registered professional engineer registered in the State of Oklahoma, and all survey information shall be sealed by a registered land surveyor registered in the State of Oklahoma.

Sec. 64-71. Variance and Appeal.

- (1) Variances; The City Council, as set out in this article, shall hear and render judgment on requests for variances from the requirements of this article. It 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 Permit Committee in the enforcement or administration of this article. Those aggrieved by the decision of the appeals board may appeal such decision in the courts of competent jurisdiction.
- (2) 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, providing the relevant factors in Section 64-70(2) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. Upon consideration of the factors noted in this section and the intent of this article, the appeals board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article.
- (3) Variances; Prerequisites for granting variances include the following:
 - (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief and the applicant for the variance has paid the appropriate fee;
 - (b) Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - 3. 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 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.

- (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 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) The city shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (7) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functional dependent use, provided that:
 - (a) The criteria outlined in this section are met; and
 - (b) The structure of other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (8) Procedure for appeal:
 - (a) Any person or persons aggrieved by an alleged error in any requirement, interpretation, decision, or determination made by the Floodplain Permit Committee in the enforcement or administration of this article may appeal such alleged error to the City Council within thirty (30) days after the date of the written decision. The appeal shall be filed in writing with the City Clerk. The City Clerk shall forward the appeal to the Floodplain Administrator.
 - (b) The information required to be submitted by the appellant for the appeal shall be the following:
 - 1. All the information, plans, elevations, and calculations and other material specified in Section 64-70 of this article;
 - 2. Documentation that the request is based upon good and sufficient cause and documentation from a licensed engineer, registered in the State of Oklahoma, that the appeal will not increase the level of the base flood discharge in the regulatory floodway;
 - 3. The appellant must also pay any fee required by the code as provided in the fee schedule.
 - (c) The Floodplain Administrator shall perform the following duties:
 - 1. Docket the appeal on receipt from the clerk;
 - 2. Provide written notice to the appellant of the date, time and place that council will consider the appeal;
 - 3. Present the appeal to the city council within sixty (60) days of receipt of the appeal;
 - 4. Notify the appellant of the decision of the city council on the appeal; and
 - 5. Maintain all records and actions involving an appeal or variance and report to the National Flood Insurance Program Administrator, as required or upon request, with all necessary information concerning the appeal, including justification for any variances to the regulations.

- (d) No permit of any kind will be issued for any development upon any application for a floodplain permit which is the subject of the appeal until a final decision has been made by the city council. (Federal Law Reference – 44 CFR § 60.6)

Sec. 64-72. General standards for flood hazard areas.

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

- (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 and utility equipment 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 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 floodwaters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters; and
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 64-73. Specific standards for flood hazard areas.

In all areas of special flood hazards the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one or more feet above the base flood elevation. A licensed professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Permit Committee that the standard of this subsection, as proposed in Section 64-75, is satisfied.
- (2) *Nonresidential construction.* New construction or substantial improvements of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement, elevated to one foot or more above the base flood elevation.
- (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that 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 openings 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; or

- (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 shall be installed using methods and practices which minimize flood damage. For the purpose 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) Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure. All mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Special requirements shall be that:
 - 1. Over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations with mobile homes less than 50 feet long requiring one additional tie per side;
 - 2. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with mobile homes less than 50 feet long requiring four additional ties per side;
 - 3. All components of the anchoring system be capable of carrying a force of 4,800 pounds; all anchoring must be of a "man earth" type or equal; and
 - 4. Any additions to the mobile home must be similarly anchored.
- (c) All manufactured homes shall be in compliance with this article; and
- (d) All manufactured homes to be placed or substantially improved within Zone AE on the community's FIRM shall be elevated on a permanent foundation such that the bottom of the I beam of the manufactured home is at or above the base flood elevation, and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of this article.

(5) *Recreational vehicles.* Recreational vehicles on sites within Zone AE and A on the community's FIRM shall either:

- (a) Be on the site for fewer than 180 days;
- (b) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system or if it is attached to the site only by quick-disconnect-type utilities and security devices and has no permanently attached additions; or
- (c) Meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" in Subsection (4) of this section.

(6) *Accessory Structure.* Accessory structures to be placed on sites within Zones A and AE shall comply with the following:

- (a) The structure shall be unfinished on the interior;
- (b) The structure shall be used only for parking and limited storage;
- (c) The structure shall not be used for human habitation. Prohibited activities or uses include but not to working, sleeping, living, cooking or restroom use;

- (d) Service facilities such as electrical and heating equipment must be elevated to or above the BFE;
- (e) The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (f) The structure shall be designed to have low flood damage potential and constructed with flood resistance materials;
- (g) The structure shall be firmly anchored to prevent flotation, collapse and lateral movement;
- (h) Floodway requirements must be met in the construction of the structure;
- (i) Openings to relieve hydrostatic pressure during a flood shall be provided below the BFE; and
- (j) The structure shall be located so as not to cause damage to adjacent and nearby structures.

Sec. 64-74. Floodways.

Floodways located within areas of special flood hazard established in this article 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 developments unless certification by a professional licensed engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels within the community during occurrence of the base flood discharge;
- (2) If Subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 64-72; and
- (3) Under the provisions of 44 CFR 65.12, of the National Flood Insurance 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 applies for a conditional FIRM and floodway revision through FEMA.

Sec. 64-75. Standards for subdivision proposals, flood hazard areas.

- (1) All subdivision proposals shall be consistent with Sections 64-60 through 64-62 of this Article.
- (2) All proposals for the development of subdivisions including manufactured home parks and subdivisions shall meet floodplain permit requirements of Sections 64-66, 64-70 and 64-72 et seq.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including manufactured home parks and subdivisions which is greater than 30 lots or three acres, whichever is less, if not otherwise provided pursuant to Sections 64-65 and 64-69.
- (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 manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

Sec. 64-76. Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, altered, or changed in use without full compliance with the terms of this article and other applicable regulations. Violation of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with condition) shall constitute a misdemeanor and a general nuisance. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be punished according to a schedule of fines, as shall be modified from time to time by the council, and made available for public viewing in the office of the clerk of court, as provided in Section 1-14, for each violation, and, in addition, shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 3. CODIFICATION. Chapter 64, Article III, Sections 64-60 through 64-76 are hereby codified as Chapter 64, Article III, Section 64-60 through 64-76 of the City of Muskogee, Oklahoma, Code of Ordinances.

Section 4. REPEALER. All other ordinances or parts of ordinances in direct conflict herewith are repealed to the extent of the conflict only.

Section 5. SEVERABILITY. Should any part section, subsection, sentence, provision, clause or phrase hereof be held invalid, void, or unconstitutional for any reason, such holding shall not render invalid, void, or unconstitutional any other section, subsection, sentence, provision, clause, or phrase of this ordinance, and the same are deemed severable for this purpose.

Section 6. EMERGENCY. This ordinance being designated to protect the public health, safety, and welfare of the inhabitants of the City of Muskogee, Oklahoma, and its passage being immediately necessary, an emergency is hereby declared to exist and by reason whereof this ordinance shall take effect immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA, THIS ____ DAY OF _____, 2011.

CITY OF MUSKOGEE

JOHN TYLER HAMMONS, MAYOR

ATTEST:

PAMELA S. BATES, CITY CLERK
(seal)

Approved as to form and legality this _____ day of _____, 2011.

JOHN H. VINCENT, CITY ATTORNEY

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