

CHAPTER XVI: ZONING AND PLANNING

Article

- 1. CITY PLANNING COMMISSION/BOARD OF ZONING APPEALS**
- 2. ZONING REGULATIONS**
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ARTICLE 1: CITY PLANNING COMMISSION/BOARD OF ZONING APPEALS

Section

- 16-101 Commission re-establishment
- 16-102 Membership, terms, interest and compensation
- 16-103 Meetings, officers, and records
- 16-104 Powers and duties
- 16-105 Board of Zoning Appeals
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§ 16-101 COMMISSION RE-ESTABLISHMENT.

There is hereby re-established the City Planning Commission. The Planning Commission was originally created by Ord. 962.

(1996 Code, § 16-101) (Ord. 962, passed - -)

§ 16-102 MEMBERSHIP, TERMS, INTEREST AND COMPENSATION.

(a) The Planning Commission shall consist of nine members, at least two of whom shall reside outside the city limits and within a limit of three miles from the city limits.

(b) The members of the Planning Commission shall be appointed by the Mayor with the approval of the other City Commission. The members of the Planning Commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms as one, two and three years. Thereafter, members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired term only. No member shall serve more than two terms or six years, whichever is longer.

(c) Should any member have a conflict of interest, either directly or indirectly, in any matter coming before the Commission, he or she shall be disqualified to discuss or vote on the matter. The governing body may adopt rules and regulations providing for removal of members of the Commission.

(d) Members of the Commission shall serve without compensation, but may be reimbursed for expenses actually incurred in the performance of their duties as deemed desirable by the governing body. (1996 Code, § 16-102) (Ord. 962, passed - -; Ord. 1367, passed 2-11-2002)

§ 16-103 MEETINGS, OFFICERS AND RECORDS.

The members of the Planning Commission shall meet at such time and place as may be fixed in the Commission's bylaws. The Commission shall elect one member as Chairperson and one member as Vice-Chairperson who shall serve one year and until their successors have been elected. A Secretary shall also be elected who may or may not be a member of the Commission. Special meetings may be called at any time by the Chairperson or in the Chairperson's absence by the Vice-Chairperson. The Commission shall adopt bylaws for the transaction of business and hearing procedures. All actions by the Commission shall be taken by a majority vote of the entire membership of the Commission; except that, a majority of the members present and voting at the hearing shall be required to recommend approval or denial of an amendment to the zoning regulations, a rezoning amendment or a special use permit. A proper record of all the proceedings of the Commission shall be kept. The Commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the Commission.

§ 16-104 POWERS AND DUTIES.

The governing body and Planning Commission shall have all the rights, powers and duties as authorized in K.S.A. 12-741 et seq., and amendments thereto, which are hereby incorporated by reference as part of this section and shall be given full force and effect as if the same had been fully set forth. The Commission is hereby authorized to make or cause to be made, adopted and maintained a Comprehensive Plan for the city and any unincorporated territory lying outside of the city but within the county in which the city is located, which in the opinion of the Commission forms the total community of which the city is a part. The Commission shall also cause to be prepared, adopted and maintained zoning and subdivision regulations on all land within the jurisdiction designated by the governing body. The Comprehensive Plan and zoning and subdivision regulations are subject to final approval of the governing body by ordinance. Periodically, the governing body may request the Commission to undertake other assignments related to planning and land use regulations.

§ 16-105 BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall be consolidated with the Planning Commission, under the authority of K.S.A. 12-759(g), and all powers and duties of the Board of Zoning Appeals shall be enforced by the Planning Commission from and after the effective date of May 11, 2015. The Planning Commission shall serve as the Board of Zoning Appeals with the authority set out by K.S.A. 12-759, and shall adopt a schedule of fees for any applications submitted to the Planning Commission for such appeals.

(1996 Code, § 16-201) (Ord. 1495, passed 5-11-2015)

§ 16-106 BUDGET.

The governing body shall approve a budget for the Planning Commission and make such allowances to the Commission as it deems proper, including funds for the employment of such employees or consultants as the governing body may authorize and provide, and shall add the same to the general budget. Prior to the time that monies are available under the budget, the governing body may appropriate

monies for such purposes from the General Fund. The governing body may enter into such contracts as it deems necessary and may receive and expend funds and monies from the state or federal government or from any other resource for such purposes.

ARTICLE 2: ZONING REGULATIONS

Section

- 16-201 Zoning regulations incorporated
- 16-202 Zoning district boundary map incorporated
- 16-203 Rural Housing Incentive District

§ 16-201 ZONING REGULATIONS INCORPORATED.

The Land Development Code of the city, and its extraterritorial jurisdiction in certain portions of unincorporated Brown County and Nemaha County, Kansas, October, 2004 Edition, prepared by the City Planning Commission, is by reference incorporated in and by this publication, made part of this chapter and article as fully as though set out at length herein, and is adopted as the zoning regulations for the city. No fewer than three copies of the zoning regulations, marked "Official Copy as Incorporated by the Code of the City of Sabetha" and to which there shall be a published copy of this section attached, shall be filed with the City Clerk to be open for inspection and available to the public at all reasonable business hours.

(1996 Code, § 16-301) (Ord. 1396, passed 10-18-2004; Ord. 1409, passed 9-12-2005)

§ 16-202 ZONING DISTRICT BOUNDARY MAP INCORPORATED.

The zoning district boundary map of the city, and its extraterritorial jurisdiction in certain portions of unincorporated Brown County and Nemaha County, Kansas, is by reference incorporated in and by this publication, made part of this chapter and article as fully as though set out at length herein, and is adopted as the zoning district boundary map for the city and its extraterritorial jurisdiction.
(Ord. 1396, passed 10-18-2004)

§ 16-203 RURAL HOUSING INCENTIVE DISTRICT.

(a) The governing body of the city hereby establishes a Rural Housing Incentive District in the city, more specifically described, as follows:

Commencing at the Southwest Corner of Northeast Fractional Quarter (NE Fr. 1/4) of Section One (1), Township Two (2) South, Range 14 East of the 6th P.M., Nemaha County, Kansas; thence N 0°00'41" W (assumed bearing), 324.80 feet along the West line of said NE Fr. 1/4; thence S 89°44'36" E 180.00 feet along a line parallel with the South line of said NE Fr. 1/4 to the true point of beginning; thence N 0°00'40" W, 319.50 feet along a line parallel with the West line of said NE Fr. 1/4; thence S 89°44'36" E 584.50 feet along a line parallel with the

South line of said NE Fr. 1/4; thence S 0°00'40" E 440.30 feet along a line parallel with the West line of said NE Fr. 1/4; thence N 89°44'36" W, 567.80 feet along a line parallel with the South line of said NE Fr. 1/4; thence N 0°00'40" W, 120.80 feet along a line parallel with the West line of said NE Fr. 1/4; thence N 89°44'36" W, 16.70 feet along a line parallel with the South line of said NE Fr. 1/4 to the point and place of beginning. Said tract contains 5.86 acres, more or less.

(b) The governing body of the city hereby adopts the plan for the development of housing within the designated Rural Housing Incentive District as that plan was presented at the public hearing held at 6:00 p.m. on May 1, 2000.
(Ord. 1343, passed 5-1-2000)

ARTICLE 3: SUBDIVISION REGULATIONS

Section

16-301 Regulations incorporated

§ 16-301 REGULATIONS INCORPORATED.

The subdivision regulations of the city, and its extraterritorial jurisdiction in certain portions of unincorporated Brown County and Nemaha County, Kansas, October, 2004 Edition, prepared by the City Planning Commission, is by reference incorporated in and by this publication, made part of this chapter and article as fully as though set out at length herein, and is adopted as the subdivision regulations for the city. No fewer than three copies of the subdivision regulations, marked "Official Copy as Incorporated by the Code of the City of Sabetha" and to which there shall be a published copy of this section attached, shall be filed with the City Clerk to be open for inspection and available to the public at all reasonable business hours.

(1996 Code, § 16-401) (Ord. 1395, passed 10-18-2004)

ARTICLE 4: FLOODPLAIN MANAGEMENT

Section

- 16-401 Statutory authorization
- 16-402 Findings of fact
- 16-403 Statement of purpose
- 16-404 General provisions
- 16-405 Administration
- 16-406 Provisions for flood hazard reduction
- 16-407 Flood management variance procedures
- 16-408 Penalties for violation
- 16-409 Amendments
- 16-410 Definitions

§ 16-401 STATUTORY AUTHORIZATION.

(a) *Approval of draft ordinance by Kansas Chief Engineer prior to adoption.* The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on September 28, 2015.

(b) *Kansas statutory authorization.* The Legislature of the state has in K.S.A. 12-741 et seq., and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety and general welfare. Therefore, the governing body of the city ordains as follows.
(Ord. 1501, passed 12-14-2015)

§ 16-402 FINDINGS OF FACT.

(a) *Flood losses resulting from periodic inundation.* The special flood hazard areas of the city are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

(b) *General causes of the flood losses.* These flood losses are caused by:

(1) The cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and

(2) The occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated or otherwise unprotected from flood damages.
(Ord. 1501, passed 12-14-2015)

§ 16-403 STATEMENT OF PURPOSE.

It is the purpose of this article to promote the public health, safety and general welfare; to minimize those losses described in § 16-402(b)(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 C.F.R. § 59.22(a)(3); and to meet the requirements of 44 C.F.R. § 60.3(b) and K.A.R. 5-44-4 by applying the provisions of this article to:

(a) Restrict or prohibit uses that are dangerous to health, safety or property in times of flooding or cause undue increases in flood heights or velocities;

(b) Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and

(c) Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.
(Ord. 1501, passed 12-14-2015)

§ 16-404 GENERAL PROVISIONS.

(a) *Lands to which article applies.* This article shall apply to all lands within the jurisdiction of the city identified as unnumbered A zones on the Index Map dated August 19, 1985 of the Nemaha County Flood Insurance Rate Map (FIRM), as amended, and any future revisions thereto. In all areas covered by this article, no development shall be permitted, except through the issuance of a floodplain development permit, granted by the city or its duly designated representative under such safeguards and restrictions as the governing body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in § 16-406.

(b) *Compliance.* No development located within the special flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

(c) *Abrogation and greater restrictions.* It is not intended by this article to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only.

(d) *Interpretation.* In their interpretation and application, the provisions of this article shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

(e) *Warning and disclaimer of liability.*

(1) The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions.

(2) This article shall not create a liability on the part of the city, the governing body, any officer or employee thereof, for any flood damages that may result from reliance on this article or any administrative decision lawfully made there under.

(f) *Severability.* If any section, clause, provision or portion of this article is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this article shall not be affected thereby,
(Ord. 1501, passed 12-14-2015)

§ 16-405 ADMINISTRATION.

(a) *Floodplain development permit.* A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in § 16-404(a). No person, firm, corporation or unit of government shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

(b) *Designation of Floodplain Administrator.* The Zoning Administrator is hereby appointed to administer and implement the provisions of this article as the Floodplain Administrator.

(c) *Duties and responsibilities of Floodplain Administrator.* Duties of the Floodplain Administrator shall include, but not be limited to:

(1) Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this article have been satisfied;

(2) Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required by federal, state or local law;

(3) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;

(4) Issue floodplain development permits for all approved applications;

(5) Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);

(6) Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse;

(7) Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;

(8) Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved nonresidential structures have been floodproofed; and

(9) When floodproofing techniques are utilized for a particular nonresidential structure, the Floodplain Administrator shall require certification from a registered professional engineer or architect.

(d) Application for floodplain development permit.

(1) To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose.

(2) Every floodplain development permit application shall:

(A) Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed building or work;

(B) Identify and describe the work to be covered by the floodplain development permit;

(C) Indicate the use or occupancy for which the proposed work is intended;

(D) Indicate the assessed value of the structure and the fair market value of the improvement;

(E) Identify the existing base flood elevation and the elevation of the proposed development;

(F) Give such other information as reasonably may be required by the Floodplain Administrator;

(G) Be accompanied by plans and specifications for proposed construction; and

(H) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.
(Ord. 1501, passed 12-14-2015)

§ 16-406 PROVISIONS FOR FLOOD HAZARD REDUCTION.

(a) General standards.

(1) No permit for floodplain development shall be granted for new construction, substantial improvements and other improvements, including the placement of manufactured homes, within any unnumbered A zone unless the conditions of this section are satisfied.

(2) All areas identified as unnumbered A zones on the flood insurance rate map (FIRM) or flood hazard boundary map (FHBM) are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this article. If the flood insurance study is not available, the city shall obtain, review and reasonably utilize any base flood elevation or floodway data currently available from state, federal and other sources.

(3) All new construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

(A) Design or adequate anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(B) Construction with materials resistant to flood damage;

(C) Utilization of methods and practices that minimize flood damages;

(D) All electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(E) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination from them during flooding; and

(F) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:

(i) All such proposals are consistent with the need to minimize flood damage;

(ii) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;

(iii) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(iv) All proposals for development, including proposals for manufactured home parks and subdivisions, of five acres or 50 lots, whichever is lesser, include within such proposals base flood elevation data.

(4) *Storage, material and equipment.* The storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

(5) *Nonconforming use.* A structure, or the use of a structure or premises that was lawful before the passage or amendment of the article, but which is not in conformity with the provisions of this article, may be continued subject to the following conditions.

(A) If such structure, use or utility service is discontinued for 12 consecutive months, any future use of the building shall conform to this article.

(B) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50% of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places or local inventory of historic places upon determination.

(b) *Specific standards.*

(1) In all areas of special flood hazard, once base flood elevation data is obtained, as set forth in division (a)(2) above, the following provisions are required.

(A) *Residential construction.* New construction or substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to a minimum of one foot above base flood level. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(B) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other nonresidential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be dry floodproofed to a minimum of one foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this division (b)(1)(B) are satisfied. The elevation of the lowest floor shall be certified by a licensed

land surveyor or professional engineer. Such certification shall be provided to the Floodplain Administrator as set forth in § 16-405(c)(7), (c)(8) and (c)(9).

(C) *All new construction.*

(i) Require for all new construction and substantial improvements, that fully enclosed areas below the lowest floor used solely for parking of vehicles, building access or storage in an area other than a basement and 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.

(ii) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

1. 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; and

2. The bottom of all opening shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(2) In all areas of special flood hazard, once floodway data is obtained, as set forth in division (a)(2) above, the following provisions are required.

(A) The designated floodway shall be based on the standard that the area chosen for the floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation more than one foot at any point.

(B) The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the designated regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(c) *Manufactured homes.*

(1) All manufactured homes to be placed within special flood hazard areas shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) Require manufactured homes that are placed or substantially improved within unnumbered A zones on the community's FIRM or FHBM on sites:

- (A) Outside of a manufactured home park or subdivision;
- (B) In a new manufactured home park or subdivision;
- (C) In an expansion to an existing manufactured home park or subdivision; or

(D) In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of one foot above the base flood level and be securely attached to an adequately anchored foundation system to resist flotation, collapse and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(3) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within unnumbered A zones on the community's FIRM or FHBM, that are not subject to the provisions of division (c)(2) above, be elevated so that either:

(A) The lowest floor of the manufactured home is a minimum of one foot above the base flood level; or

(B) 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 and be securely attached to an adequately anchored foundation system to resist flotation, collapse and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(d) *Recreational vehicles.*

(1) Require that recreational vehicles placed on sites within unnumbered A zones on the community's FIRM or FHBM either:

(A) Be on the site for fewer than 180 consecutive days;

(B) Be fully licensed and ready for highway use*; or

(C) Meet the permitting, elevating and the anchoring requirements for manufactured homes of this article.

(2) *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.

(Ord. 1501, passed 12-14-2015)

§ 16-407 FLOOD MANAGEMENT VARIANCE PROCEDURES.

(a) *Establishment of Appeal Board.* The Zoning Appeal Board, as established by the city, shall hear and decide appeals and requests for variances from the floodplain management requirements of this article.

(b) *Responsibility of Appeal Board.*

(1) Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in division (a) above.

(2) The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this article.

(c) *Further appeals.* Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court of the county as provided in K.S.A. 12-759 and K.S.A. 12-760.

(d) *Floodplain management variance criteria.* In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this article and the following criteria:

- (1) Danger to life and property due to flood damage;
- (2) Danger that materials may be swept onto other lands to the injury of others;
- (3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) Importance of the services provided by the proposed facility to the community;
- (5) Necessity to the facility of a waterfront location, where applicable;
- (6) Availability of alternative locations, not subject to flood damage, for the proposed use;
- (7) Compatibility of the proposed use with existing and anticipated development;
- (8) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) Safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and

(11) Costs 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; streets; and bridges.

(e) *Conditions for approving floodplain management 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 elevation, providing divisions (e)(2) through (e)(6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the reconstruction, repair, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places or local inventory of historic places upon determination; provided the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

(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, or conflict with existing local laws or ordinances.

(6) (A) A community shall notify the applicant in writing over the signature of a community official that:

(i) The issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

(ii) Such construction below the base flood level increases risks to life and property.

(B) Such notification shall be maintained with the record of all variance actions as required by this article.
(Ord. 1501, passed 12-14-2015)

§ 16-408 PENALTIES FOR VIOLATION.

Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.
(Ord. 1501, passed 12-14-2015)

§ 16-409 AMENDMENTS.

The regulations, restrictions and boundaries set forth in this article may from time to time be amended, supplemented, changed or repealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973; provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the city. At least 20 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this article are in compliance with the NFIP regulations.
(Ord. 1501, passed 12-14-2015)

§ 16-410 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

100-YEAR FLOOD. See **BASE FLOOD**.

ACCESSORY STRUCTURE. The same as **APPURTENANT STRUCTURE**.

ACTUARIAL RATES. See **RISK PREMIUM RATES**.

ADMINISTRATOR. The Federal Insurance Administrator.

AGENCY. The Federal Emergency Management Agency (FEMA).

APPEAL. A request for review of the Floodplain Administrator's interpretation of any provision of this article or a request for a variance.

APPURTENANT STRUCTURE. A structure that 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 SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a 1 % or greater chance of flooding in any given year.

BASE FLOOD. The flood having a 1 % chance of being equaled or exceeded in any given year.

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

BUILDING. See **STRUCTURE**.

CHIEF ENGINEER. The chief engineer of the Division of Water Resources, Kansas Department of Agriculture.

CHIEF EXECUTIVE OFFICER or **CHIEF ELECTED OFFICIAL.** The official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

COMMUNITY. Any state or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

DEVELOPMENT. Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

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

ELIGIBLE COMMUNITY or **PARTICIPATING COMMUNITY.** A community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

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

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets,

and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland waters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source; and
- (3) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in division (1) above of this definition.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

FLOOD HAZARD MAP. The document adopted by the governing body showing the limits of:

- (1) The floodplain;
- (2) The floodway;
- (3) Streets;
- (4) Stream channel; and
- (5) Other geographic features.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS). An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

FLOODPLAIN or FLOOD-PRONE AREA. Any land area susceptible to being inundated by water from any source (see *FLOODING*).

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

FLOODPLAIN MANAGEMENT REGULATIONS. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

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

FLOODWAY or REGULATORY FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FREEBOARD. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. **FREEBOARD** tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

FUNCTIONALLY DEPENDENT USE. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of 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.

LOWEST FLOOR. 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 such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this article.

MANUFACTURED HOME. A structure, transportable in one or more sections, that 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. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MAP. The flood hazard boundary map (FHBM) or the flood insurance rate map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).

MARKET VALUE or **FAIR MARKET VALUE.** An estimate of what is fair, economic, just and equitable value under normal local market conditions.

MEAN SEA LEVEL. For purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map (FIRM) are referenced.

NEW CONSTRUCTION. For the purposes 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 the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lot 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 the community.

NFIP. The National Flood Insurance Program (NFIP).

PARTICIPATING COMMUNITY. Also known as an **ELIGIBLE COMMUNITY**. A community in which the Administrator has authorized the sale of flood insurance.

PERMIT. A signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as:

- (1) The site plan;
- (2) An elevation certificate; and
- (3) Any other necessary or applicable approvals or authorizations from local, state or federal authorities.

PERSON. Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including federal, state and local governments and agencies.

PRINCIPALLY ABOVE GROUND. That at least 51 % of the actual cash value of the structure, less land value, is above ground.

RECREATIONAL VEHICLE. 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.

REMEDY A VIOLATION. To bring the structure or other development into compliance with federal, state or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

RISK PREMIUM RATES. Those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with § 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. **RISK PREMIUM RATES** include provisions for operating costs and allowances.

SPECIAL FLOOD HAZARD AREA. See *AREA OF SPECIAL FLOOD HAZARD*.

SPECIAL HAZARD AREA. An area having special flood hazards and shown on a FIRM or FHBM as zones (unnumbered or numbered) A, AO, AE or AH.

START OF CONSTRUCTION. Includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvements were 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 slabs or footings, the installation of piles, the construction of columns, 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, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor 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.

STATE COORDINATING AGENCY. The Division of Water Resources, Kansas Department of Agriculture or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the NFIP in the state.

STRUCTURE. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **STRUCTURE** for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT.

(1) Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% 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.

(2) The term does not, however, include either:

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

VARIANCE. A grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

VIOLATION. The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required by this article is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

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