60.3(a)

### FLOOD DAMAGE PREVENTION ORDINANCE

### ARTICLE 1

### STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

**SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the {*governing body*} of {*community name*}, Texas does ordain as follows:

**SECTION B. FINDINGS OF FACT**

 (1) The flood hazard areas of {*community name*} 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’s health, safety and general welfare.

 (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

**SECTION C. STATEMENT OF PURPOSE**

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

 (1) Protect human life and health;

 (2) Minimize expenditure of public money for costly flood control projects;

 (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

 (4) Minimize prolonged business interruptions;

 (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

 (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

 (7) Ensure that potential buyers are notified that property is in a flood area.

**SECTION D. METHODS OF REDUCING FLOOD LOSSES**

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

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

 (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

 (3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;

 (4) Control filling, grading, dredging and other development which may increase flood damage;

 (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

### ARTICLE 2

### DEFINITIONS

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

**ACCESSORY STRUCTURE** means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

**ACT** means the statutes authorizing the National Flood Insurance Program (NFIP) that are incorporated in [42 U.S.C. 4001-](https://www.govinfo.gov/link/uscode/42/4001-) *et seq.*

**ADMINISTRATOR** means the Administrator of the Federal Emergency Management Agency.

**AGENCY** means the Federal Emergency Management Agency, Washington DC.

**AGRICULTURAL STRUCTURE** for floodplain management purposes, means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with production, harvesting, storage, raising or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

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

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

**APPURTENANT STRUCTURE** means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

**AREA OF FUTURE CONDITIONS FLOOD HAZARD** means the land area that would be inundated by the 1-percent annual chance (100-year) flood based on future conditions hydrology.

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

**AREA OF SPECIAL FLOOD HAZARD** is the land in the floodplain within a community subject to a 1-percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V. For purposes of these regulations, the term “special flood hazard area” (SFHA) is synonymous in meaning with the phrase “area of special flood hazard.”

**AREA OF SPECIAL FLOOD-RELATED EROSION HAZARD** is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the FHBM. After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

**AREA OF SPECIAL MUDSLIDE (I.E., MUDFLOW) HAZARD** is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

**BASE FLOOD** means the flood having a 1-percent chance of being equaled or exceeded in any given year.

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

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

**BASE LEVEL ENGINEERING (BLE)** are flood risk datasets that meet the technical mapping standards outlined in [FEMA Policy 204-078-1 Standards for Flood Risk Analysis and Mapping](https://www.fema.gov/sites/default/files/documents/fema_policy-standards-flood-risk-analysis-mapping-rev-13.pdf) and include estimated floodplain extents (10‑, 1- and 0.2-percent annual chance events), water surface elevation grids (1- and 0.2-percent annual chance events), flood depth grids (1- and 0.2-percent annual chance events) and Hazus Flood Risk Assessment.

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

**BUILDING** —see *Structure.*

**CHIEF EXECUTIVE OFFICER** of the community (CEO) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

**CLOSED BASIN LAKE** means a lake with no outlet or a lake with inadequate regulated or elevated outlets.

**COMMUNITY** means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**CRITERIA** means the comprehensive criteria for land management and use for flood-prone areas developed under [42 U.S.C. 4102](https://www.govinfo.gov/link/uscode/42/4102) for the purposes set forth in [this](https://www.ecfr.gov/current/title-44/part-60) ordinance.

**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.

**CURVILINEAR LINE** means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

**DEVELOPED AREA** means an area of a community that is:

 (1) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential and commercial activities; and

 (a) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

 (b) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

 (c) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

 (2) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least three sides to areas meeting the criteria of paragraph (1) at the time the designation is adopted.

 (3) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual *start of construction* of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted, and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (1)(c).

**DEVELOPMENT** means any man-made change to 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.

**ELIGIBLE COMMUNITY OR PARTICIPATING COMMUNITY** means a community for which the Federal Insurance Administrator has authorized the sale of flood insurance under the NFIP.

**ELEVATED BUILDING** means, 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.

**EMERGENCY PROGRAM** means the initial phase of a community's participation in the NFIP, as prescribed by Section 1306 of the Act.

**EROSION** means the process of either rapid or gradual wearing away of land masses.

**EXCEPTION** means a waiver from the provisions of this ordinance directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

**EXCEPTIONAL HARDSHIP** means, for the purposes of *variance* from this ordinance, the exceptional difficulty that would result from a failure to grant the requested variance. The hardship must be exceptional, unusual and specific to the property involved, not to the personal circumstances of the permit applicant.

**EXISTING CONSTRUCTION** means, for the purposes of determining insurance 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 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.

**EXISTING STRUCTURES** —see *Existing Construction.*

**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:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(c) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) 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 an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition.

**FLOOD ELEVATION DETERMINATION** means a determination by the Federal Insurance Administrator of the water surface elevations of the *base flood*, that is, the flood level that has a 1-percent or greater chance of occurrence in any given year.

**FLOOD ELEVATION STUDY**—see *Flood Insurance Study.*

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood or mudslide (i.e., mudflow)-related erosion areas having special hazards have been designated as Zones A, M and/or E.

**FLOOD INSURANCE** means the insurance coverage provided under the *Program.*

**FLOOD INSURANCE RATE MAP (FIRM)** means an official map of a community on which the Federal Insurance Administrator has delineated both the *special hazard areas* and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**FLOOD INSURANCE STUDY (FIS)** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**FLOODPLAIN OR FLOOD-PRONE AREA** means any land area susceptible to being inundated by water from any source (see *Flood* or *Flooding*).

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

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

**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 area within a community subject to a *special flood hazard* and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOODPROOFING** means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOOD-RELATED EROSION** means the collapse or subsidence of land along the shore of a lake or other body of water as a result of 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 a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in *flooding*.

**FLOOD-RELATED EROSION AREA OR FLOOD-RELATED, EROSION-PRONE AREA** means a land area adjoining the shore of a lake or other body of water, which, due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

**FLOOD-RELATED EROSION AREA MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

**FLOODWAY** —see *Regulatory Floodway.*

**FLOODWAY ENCROACHMENT LINES** mean the lines marking the limits of floodways on Federal, State and local floodplain maps.

**FREEBOARD** means 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 wave action, bridge openings and the hydrological effect of urbanization of the watershed.

**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 includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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

**HISTORIC STRUCTURE** means any structure that is:

 (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

 (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

 (3) Individually listed in the Texas Historical Commission’s inventory as a Recorded Texas Historic Landmark or State Antiquities Landmark; or

 (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

 (a) By the Texas Historical Commission; or

 (b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE** means a man-made 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, or levees, and associated structures such as closure and drainage devices which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements in this ordinance.

**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. 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 for sale.

**MAP** means the FHBM or the FIRM for a community issued by the Agency.

**MEAN SEA LEVEL** means, for purposes of the NFIP, the North American Vertical Datum (NAVD) of 1988 or other datum to which base flood elevations shown on a community's FIRM are referenced.

**MIXED USE BUILDING** means a building that has both residential and non-residential uses.

**MUDSLIDE (I.E., MUDFLOW)** describes a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

**MUDSLIDE (I.E., MUDFLOW)** **AREA MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works and floodplain management regulations.

**MUDSLIDE (I.E., MUDFLOW)-PRONE AREA** means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

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

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

**NON-RESIDENTIAL BUILDING** means a commercial or mixed-use building where the primary use is commercial or non-habitational.

**ONE-PERCENT ANNUAL CHANCE FLOOD** —see *Base Flood.*

**PARTICIPATING COMMUNITY***,* also known as an *eligible community,* means a community in which the Administrator has authorized the sale of flood insurance.

**PERSON** includes any individual or group of individuals, corporation, partnership, association or any other entity, including State and local governments and agencies.

**PLAYA** means a dry, vegetation-free, flat area at the lowest part of an undrained desert basin. It is a location where ephemeral lakes form during wet periods.

**PRINCIPALLY ABOVE GROUND** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**PROGRAM** means the National Flood Insurance Program authorized by [42 U.S.C. 4001](https://www.govinfo.gov/link/uscode/42/4001) through [4128](https://www.govinfo.gov/link/uscode/42/4128).

**RECESSION RATE** is the average rate, in feet per year, at which an eroding shoreline moves landward.

**RECREATIONAL VEHICLE** means a vehicle which is:

 (1) Built on a single chassis;

 (2) 400 square feet or less when measured at the largest horizontal projections;

 (3) Designed to be self-propelled or permanently towable by a light duty truck; and

 (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**REFERENCE FEATURE** is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

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

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

**RESIDENTIAL BUILDING** means a non-commercial building designed for habitation by one or more families or a mixed use building that qualifies as a single-family, two- to four-family or other residential building.

**RIVERINE** means relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

**SHEET FLOW AREA** —see *Area of Shallow Flooding.*

**SINGLE-FAMILY DWELLING** means either:

 (1) A residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area; or

 (2) A single-family residential unit within a two- to four-family building, other residential building, business or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

**60-YEAR SETBACK** means a distance equal to 60 times the average annual long term recession rate (erosion) at a site, measured from the reference feature.

**SPECIAL FLOOD HAZARD AREA** —see *Area of Special Flood Hazard.*

**SPECIAL HAZARD AREA** means an area having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1–30, VE, V, M or E.

**START OF CONSTRUCTION** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]) includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site; such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of *accessory structures*, 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.

**STORM CELLAR** means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar windstorm activity.

**STRUCTURE** means, 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:

(1) A building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

(2) A manufactured home (a “manufactured home,” also known as a “mobile home,” is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

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

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

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

**30-YEAR SETBACK** means a distance equal to 30 times the average annual long term recession rate (erosion) at a site, measured from the reference feature.

**VARIANCE** means a grant of relief by a community from the terms of a floodplain management regulation.

**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 this flood damage prevention ordinance is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**ZONE OF IMMINENT COLLAPSE** means an area subject to erosion adjacent to the shoreline of an ocean, bay or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

### ARTICLE 3

### GENERAL PROVISIONS

**SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES**

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of {*community name*}.

**SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

Since areas of special flood hazard have not been identified, water surface elevations have not been provided, nor has sufficient data identifying the floodway or coastal high hazard area been provided by the Federal Emergency Management Agency (FEMA), and the Federal Insurance Administrator has not yet identified any area within the community as having special mudslide (i.e., mudflow) hazards or as having special flood-related erosion hazards, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources.

**SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be required for all proposed construction or other development within the community, including the placement of manufactured homes, to ensure conformance with the provisions of this ordinance.

**SECTION D. COMPLIANCE**

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

**SECTION E. ABROGATION AND GREATER RESTRICTIONS**

This ordinance is not intended to repeal, abrogate, or impair any existing ordinances, easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**SECTION F. INTERPRETATION**

In the interpretation and application of this ordinance, all provisions shall be:

 (1) Considered as minimum requirements;

 (2) Liberally construed in favor of the governing body; and

 (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

**SECTION G. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance 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 man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

### ARTICLE 4

### ADMINISTRATION

**SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

The {*list position or title of the appointed Floodplain Administrator – i.e., Code Enforcement Officer*} is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

**SECTION B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

Duties and responsibilities of the Floodplain Administrator shall include but not be limited to the following:

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

 (2) Review permit applications to determine whether proposed construction or other development, including the placement of manufactured homes, will be reasonably safe from flooding.

 (3) Review 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) Review, approve or deny all applications for development permits required by adoption of this ordinance.

 (5) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

 (6) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

 (a) Where Base Level Engineering is available:

 (i) Base Level Engineering data shall be reviewed and reasonably used in FEMA-identified Special Flood Hazard Areas where base flood elevations and floodway data have not been identified and in areas where FEMA has not identified Special Flood Hazard Areas.

 (ii) Base Level Engineering data shall be reasonably used if such source shows an area as flood-prone that is not shown as flood-prone on FIRMs and Flood Insurance Studies.

 (7) Notify, in riverine situations, adjacent communities, the State Coordinating Agency and the Texas Commission on Environmental Quality (TCEQ) prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administrator.

 (8) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

 (9) When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source in order to administer the provisions of Article 5.

**SECTION C. PERMIT PROCEDURES**

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard, mudslide (i.e. mudflow)-prone areas and flood-related erosion hazard. Additionally, the following information is required:

 (a) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;

 (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

 (c) Certification from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section A and Section B (2);

 (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

 (e) Maintain a record of all such information in accordance with Article 4, Section B (1).

 (2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

1. 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 flood waters 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.

 (3) Determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows) if proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards. Factors to be considered in making such a determination should include but not be limited to:

 (a) The type and quality of soils;

 (b) Any evidence of ground water or surface water problems;

 (c) The depth and quality of any fill;

 (d) The overall slope of the site; and

 (e) The weight that any proposed structure will impose on the slope.

 (4) If a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, the following information is required:

 (a) A site investigation and further review be made by persons qualified in geology and soils engineering;

 (b) The proposed grading, excavations, new construction and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages;

 (c) The proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances; and

 (d) Drainage, planting, watering and maintenance be such as not to endanger slope stability.

 (5) Determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

 (a) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

**SECTION D. VARIANCE PROCEDURES**

 (1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance.

 (2) The Appeal Board shall hear and render judgment on an appeal only 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 ordinance.

 (3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

 (4) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance, and shall report such variances issued in its biennial report submitted to the Federal Insurance Administrator.

 (5) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2-acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of Section D (9), providing the relevant factors in Section C of this Article have been fully considered. As the lot size increases beyond 1/2-acre, the technical justification required for issuing the variance increases.

 (6) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Article 1, Section C).

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

 (8) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

 (9) Prerequisites for granting variances:

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

 (b) Variances shall only be issued upon:

 (i) Showing a good and sufficient cause;

 (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

 (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or 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:

 (i) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in Article 4, Section D (4).

 (ii) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance.

 (10) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

 (a) The criteria outlined in Article 4, Section D (1-9) are met; and

 (b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

 (11) Variances may be issued in flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion prone communities providing:

 (a) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion prone community must adopt and submit adequate floodplain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in 44 CFR [§ 60.3](https://www.ecfr.gov/current/title-44/section-60.3), [§ 60.4](https://www.ecfr.gov/current/title-44/section-60.4) or [§ 60.5](https://www.ecfr.gov/current/title-44/section-60.5). However, certain exceptions from the standards contained in this subpart may be permitted where the Federal Insurance Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for exceptional hardship and gross inequity for a particular community. Consequently, a community proposing the adoption of floodplain management regulations which vary from the standards set forth in 44 CFR [§ 60.3](https://www.ecfr.gov/current/title-44/section-60.3), [§ 60.4](https://www.ecfr.gov/current/title-44/section-60.4) or [§ 60.5](https://www.ecfr.gov/current/title-44/section-60.5) shall explain in writing to the Federal Insurance Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic and other scientific and technical data, and data with respect to the impact on public safety and the environment.

 (b) The Federal Insurance Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under Section D (11)(a) of this Article will have significant impact on the human environment. The decision whether an Environmental Impact Statement (EIS) or other environmental document will be prepared will be made in accordance with applicable environmental and historic preservation laws, regulations, Executive Orders and Agency policy. Ninety (90) or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

 (12) Variances may be issued for accessory and agricultural structures. A variance is authorized to be issued for the construction or substantial improvement of at-grade accessory structures and at-grade agricultural structures provided the requirements of this section are satisfied:

 (a) **Accessory structures**. A determination that the proposed accessory structure:

 (i) Represents minimal investment and has low damage potential (amount of physical damage, contents damage and loss of function).

 (ii) Is larger than 600 square feet.

 (iii) Complies with the wet floodproofing construction requirements of paragraph Article 4, Section D 12(c) below.

 (b) **Agricultural structures**. A determination that the proposed agricultural structure:

 (i) Is used exclusively in connection with the production, harvesting, storage, raising or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.

 (ii) Has low damage potential (amount of physical damage, contents damage and loss of function).

 (iii) Does not increase risks and pose a danger to public health, safety and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals and production and storage of highly volatile, toxic or water-reactive materials.

 (iv) Is an aquaculture structure that is dependent on proximity to water if located in a coastal high-hazard area (Zones V, VE, V1-30 and VO).

 (v) Complies with the wet floodproofing construction requirements of Article 4, Section D 12(c) below.

 (c) Wet floodproofing construction requirements. Wet floodproofed structures shall:

 (i) Be anchored to resist flotation, collapse and lateral movement.

 (ii) Have flood damage-resistant materials below the base flood elevation in compliance with the requirements of Article 5, Section A.

 (iii) Have mechanical, electrical and utility equipment in compliance with the requirements of Article 5, Sections A and B.

 (iv) In special flood hazard areas other than coastal high hazard areas, have flood openings in compliance with the requirements of Article 5, Section A.

### ARTICLE 5

### PROVISIONS FOR FLOOD HAZARD REDUCTION

**SECTION A. GENERAL STANDARDS**

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 and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

 (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

 (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

 (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

 (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

 (6) All new or replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and

 (7) All new or replacement on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

**SECTION B. STANDARDS FOR SUBDIVISION PROPOSALS**

 (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C and D of this ordinance.

 (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Article 3, Section C; Article4, Section C; and the provisions of Article 5 of this ordinance.

 (3) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

 (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

**SECTION C. SEVERABILITY**

If any section, clause, sentence or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**SECTION D. PENALTIES FOR NON-COMPLIANCE**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $\_\_{*Texas law limits the fine to $500}*\_\_\_ for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent {*governing body*} from taking such other lawful action as is necessary to prevent or remedy any violation.

**SECTION E. CERTIFICATION OF ADOPTION**

**APPROVED:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(community official)

**PASSED:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (adoption date)

# ORDINANCE BECOMES EFFECTIVE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(effective date)

I, the undersigned, {*name of certifying official*}, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the {*governing body*} at a regular meeting duly convened on {*date*}.

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 (signature of certifying official)

{*SEAL*}