

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 98-16

AN ORDINANCE RENAMING AND AMENDING IN ITS ENTIRETY TITLE 7
“BUILDING REGULATIONS”, CHAPTER V “FLOOD DAMAGE PREVENTION”
OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS;
CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND
SEVERABILITY CLAUSE; PROVIDING FOR A FINE NOT TO EXCEED FIVE
HUNDRED DOLLARS (\$500.00); PROVIDING FOR OTHER CIVIL REMEDIES;
ESTABLISHING AN EFFECTIVE DATE; AND ORDERING PUBLICATION

WHEREAS, Texas Water Code §16.315, as amended, delegates the responsibility to local governments to adopt regulations designed to minimize flood losses within the jurisdiction of said local governments resulting from storm waters; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds that flood hazard areas of the City of Kerrville, Texas, are subject to periodic inundation which has in the past resulted in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the City Council of the City of Kerrville, Texas, further finds that such periodic inundations are reasonably expected to occur in the future; and

WHEREAS, the City Council of the City of Kerrville, Texas, further finds that these flood losses are created by the cumulative effect of (1) obstructions in floodplains which cause an increase in flood heights and velocities and (2) occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage; and

WHEREAS, in order for owners of property located within the City of Kerrville, Texas, which is subject to periodic inundation to obtain flood damage insurance through the National Flood Insurance Program, the United States government, by statute and through regulations promulgated by the Federal Emergency Management Agency (“FEMA”), requires that the City of Kerrville enact floodplain regulations designed to reduce the amount of potential flood losses; and

WHEREAS, on April 29, 1997, FEMA completed a new flood insurance study of the portions of the upper Guadalupe River basin located in Kerr County, Texas, published a new Flood Insurance Rate Map, and issued a Letter of Map Revision for the City of Kerrville, Texas; and

WHEREAS, the newly published Flood Insurance Rate Map alters the boundaries of the 100 year floodplain and floodway and the Base Flood Elevations within the City; and

WHEREAS, the City of Kerrville, Texas, has previously adopted various ordinances establishing regulations related to the prevention of flood damages; and

WHEREAS, based on the findings set forth above, the City Council of the City of Kerrville, Texas, finds it is in the public interest and a benefit to the general health, safety, and welfare of the residents of the City of Kerrville, Texas, to adopt an ordinance revising and amending the City's flood damage prevention regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. That Title 7 "Building Regulations", Chapter V "Flood Damage Prevention", of the Code of Ordinances of the City of Kerrville, Texas, be renamed "Floodplain Management" and be amended to read in its entirety as follows:

**CHAPTER V
FLOODPLAIN MANAGEMENT**

Art. 7-V-1. PURPOSE AND METHODS

- (a.) **Purpose:** This Chapter is adopted for the purpose of promoting 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) insure that potential buyers are notified that property is in a flood area.
- (b.) **Methods of Reducing Flood Losses:** In order to accomplish the purposes set forth in Section (a.), above, this Chapter uses the following methods:
- (1) restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or which 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.

Art. 7-V-2. **DEFINITIONS AND INTERPRETATION**

- (a.) **Definitions:** Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application:
- (1) **“Actual Start”:** for purposes of determining the start of construction as defined in subsection (49), below:
 - (i) the first placement of permanent construction of a structure on a site;
 - (ii) the placement of a manufactured home on a foundation; or
 - (iii) in the case of a substantial improvement, 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.
 - (2) **Alluvial fan flooding:** flooding occurring on the surface of an alluvial fan or similar land form which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.
 - (3) **Alluvial Stream:** a stream that has formed its channel by the process of aggradation. The sediment in the stream is similar to the material in the bed and banks.
 - (4) **Appeal:** a request for a review of the Floodplain Administrator’s interpretation of any provision of this Chapter or a request for a variance.
 - (5) **Apex:** a point on an alluvial fan or similar land form below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.
 - (6) **Area of shallow flooding:** A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three 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.
 - (7) **Area of Special Flood Hazard:** the land in the floodplain within the City subject to a one percent or greater chance of flooding in any given year. Prior to completion of detailed ratemaking in preparation of publication of

a FIRM, such area may be designated as Zone A on the Flood Hazard Boundary Map. After the completion of detailed ratemaking in preparation for publication of a FIRM, such area may be designated as Zones A, AE, AH, AO, A1-99, VO, V1-30, VE, or V.

- (8) **Base Flood:** the flood having a one percent chance of being equaled or exceeded in any given year.
- (9) **Base Flood Elevation (BFE):** the water-surface elevation associated with the base flood as defined in the Flood Insurance Study approved by FEMA dated April 29, 1997, any amendments approved by FEMA to said Flood Insurance Study, or such other Flood Insurance Study as may be later adopted and/or amended by FEMA.
- (10) **Basement** means any area of the building having its floor s ubgrade (below ground level) on all sides.
- (11) **CFR:** Code of Federal Regulations
- (12) **Competent Engineering Study:** hydrologic and/or hydraulic analysis performed in accordance with standard engineering practices required by FEMA.
- (13) **Critical Feature:** an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.
- (14) **Cross Section:** a vertical profile of the ground surface taken perpendicular to the direction of flood flow. The profile is defined by coordinates of ground elevation and horizontal distance (station).
- (15) **Development:** any man-made change in improved and unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- (16) **Development Permit:** any authorization required by the City prior to development in the floodplain. Development permit includes, but is not limited to, a subdivision plat, site plan, building permit, grading permit or construction permit.
- (17) **Director:** the Director of Public Services of the City of Kerrville, Texas.

- (18) **Elevated Building:** a nonbasement building which, for insurance purposes, has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
- (19) **Existing Construction or Existing Structures:** for the purpose of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date.
- (20) **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 October 1, 1998.
- (21) **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 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).
- (22) **FEMA:** the Federal Emergency Management Agency.
- (23) **Flood or Flooding:** means:
- (i) a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a the overflow of inland or tidal waters; or
 - b the unusual and rapid accumulation or runoff of surface waters from any source;
 - c mudslides which are proximately caused by flooding as defined in paragraph (i),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; and
 - (ii) 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 (i),a of this definition.

- (24) **Flood Elevation Determination:** A determination by the Administrator of FEMA of the water surface elevation of the base flood.
- (25) **Flood Elevation Study or Flood Insurance Study:** An examination, evaluation, and determination of:
 - (i) flood hazards and, if appropriate, corresponding water surface elevations; or
 - (ii) mudslides (i.e. mudflow) and/or flood-related erosion hazards.
- (26) **Flood Insurance Rate Map (FIRM):** an official map of the areas of the incorporated limits of the City on which FEMA has delineated both the areas of special flood hazards and the risk premium zones applicable to property located within the City.
- (27) **Floodplain or Flood-Prone Area:** the land lying between the channel of the Guadalupe River and/or its tributaries and the outer boundary of the 100-year flood, as delineated on the FIRM. Floodplain includes land within the regulatory floodways and land within the flood fringe.
- (28) **Floodplain Development Permit:** the City authorization required by this Chapter to allow a property owner to obtain preliminary or final approval of an application for development of land within the floodplain issued alone or in concurrently with a building permit pursuant to Chapter I of this Title.
- (29) **Flood Protection System:** those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed in conformance with sound engineering standards specifically to modify flooding in order to reduce the extent of the areas within the City subject to a “special flood hazard” and the extent of the depths of associated flooding, including, but not limited to, dams, reservoirs, levees or dikes.
- (30) **Flood proofing:** 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.

- (31) **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 a designated height.
- (32) **Floodway Fringe:** the area between the floodway boundary and the 100-year floodplain boundary.
- (33) **First Placement of Permanent Construction:** the initial step of constructing a permanent structure in a site including, but not limited to:
- (i) the pouring of slab or footings;
 - (ii) the installation of piles;
 - (iii) the construction of columns; or
 - (iv) any work beyond the stage of excavation;

For purpose of this definition “permanent construction” does not include, land preparation, such as clearing, grading and filling, installation of streets and/or walkways, excavation for basement, footings, piers or foundations or the erection of temporary forms, or the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

- (34) **Functionally Dependent Use:** a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
- (35) **Habitable Floor:** any floor, other than a floor used for storage purposes only, which is usable for one or more of the following purposes:
- (i) working;
 - (ii) sleeping;
 - (iii) eating;
 - (iv) cooking; or
 - (v) recreation.

- (36) **Highest Adjacent Grade:** the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (37) **Historic Structure:** any structure that is:
- (i) 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;
 - (ii) 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;
 - (iii) 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
 - (iv) 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.
- (38) **Levee:** 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.
- (39) **Levee System:** a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
- (40) **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 non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations (44 CFR §60.3).

- (41) **Manufactured Home:** a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” also includes park trailers, travel trailers, and other similar recreational vehicles or trailers placed on a site for greater than thirty (30) consecutive days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, and other similar recreational vehicles or trailers.
- (42) **Manufactured home park or subdivision:** a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- (43) **Mean Sea Level:** for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on the FIRM are referenced.
- (44) **New Construction:** For floodplain management purposes, structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by the City and includes any subsequent improvements to such structures.
- (45) **New manufactured home park or subdivision:** a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of an Ordinance adopting this Chapter or any amendment hereto.
- (46) **100-Year Flood:** the flood that is equaled or exceeded once in 100 years on the average; equivalent to the one percent annual chance flood.
- (47) **Recreational vehicle:** a vehicle which is:
 - (i) built on a single chassis;
 - (ii) 400 square feet or less when measured at the largest horizontal projection;

- (iii) designed to be self-propelled or permanently towable by a light duty truck; and
 - (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (48) **Standard Fire Prevention Code:** the Standard Fire Prevention Code of 1994, promulgated by the Southern Building Code Congress International, as incorporated and amended by Article 10-II-10 of this Code.
- (49) **Start of Construction:** other than new construction or substantial improvements performed under the Coastal Barrier Resources Act (Pub. L. 97-348), the date the building permit was issued for new construction or substantial improvements to an existing structure, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date.
- (50) **Structure:** a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, or a manufactured home.
- (51) **Substantial damage:** damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (52) **Substantial Improvement:** any reconstruction, rehabilitation, addition, or other improvement of a structure, including structures which have incurred substantial damage regardless of the actual repair work performed, the cost of which alone or in combination with the cost of all other reconstruction, rehabilitation, or improvements performed on the structure within the five years prior to the start of construction equals or exceeds 50% of the market value of the structure either before the start of construction, or, in the case where the structure has received substantial damage, the market value before the damage occurred. “Substantial improvement” does not include:
 - (i) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which haven been identified by City officials and which are solely necessary to assure safe living conditions; or
 - (ii) any alteration of a “historic structure” listed on the National Register of Historic Places or a State Inventory of Historic Places.

- (53) **Variance:** a grant of relief by the City from the provisions of this Chapter in accordance with Section 60.6 of the National Flood Insurance Program regulations (44 CFR §60.6) when specific enforcement would result in unnecessary hardship, which relief would allow construction or development in a manner otherwise prohibited by this Chapter.
- (54) **Violation:** the failure of a structure or other development to be fully compliant with this Chapter and other floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §§ 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- (55) **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 floodplains of the Guadalupe River and its tributaries.

Art. 7-V-3. GENERAL PROVISIONS

- (a.) **Lands to Which this Chapter Applies:** This Chapter applies to all areas of special flood hazard within the incorporated limits of the City of Kerrville, Texas.
- (b.) **Basis for Establishing the Areas of Special Flood Hazard:** The areas of special flood hazard are identified and defined in the following documents prepared by FEMA are hereby adopted by reference and incorporated herein as part of this Chapter:
 - (1) a scientific and engineering report entitled, *The Flood Insurance Study for Kerr County, Texas and Incorporated Areas*, dated April 29, 1997;
 - (2) Flood Insurance Rate Map Nos. 48265C0165E, 48265C0170E, and 48265C0260E, which were effective on April 29, 1997.
- (c.) **Compliance:** No structure or land shall hereafter be located, altered, or have its use changed without full compliance with this Chapter and other applicable regulations.
- (d.) **Abrogation and Greater Restrictions:** This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions; however, to the extent that this Chapter and other ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (e.) **Interpretation:** In the interpretation and application of this Chapter, all provisions shall be:
 - (1) considered as minimum requirements;
 - (2) liberally construed in favor of the City in light of the purposes set forth in Article 7-V-1, above; and
 - (3) deemed neither to limit nor repeal any other powers granted under State law.
- (f.) **Warning and Disclaimer of Liability:** The degree of flood protection required by this Chapter 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 Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City or any official or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

Art. 7-V-4. ADMINISTRATION

- (a.) **Designation of the Floodplain Administrator:** The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of Part 44 of the Code of Federal Regulations (National Flood Insurance Program Regulations) pertaining to flood plain management.
- (b.) **Duties and 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 Chapter, including records related to Floodplain Development Permits issued or denied pursuant to Article 7-V-5;
 - (2) review permit applications to determine whether proposed building sites will be reasonably safe from flooding;
 - (3) review, approve or deny all applications for Floodplain Development Permits required by this Chapter;
 - (4) review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 ;
 - (5) where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;
 - (6) notify, in riverine situations, adjacent communities and the Texas Natural Resource Conservation Commission, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
 - (7) assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;
 - (8) when base flood elevation data has not been provided in accordance with Article 7-V-3(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 pending receipt of data from the FEMA Administrator in order to administer the provisions of

Article 7-V-5; provided, however, the Floodplain Administrator may require that such information be provided by an applicant with respect to property which is the subject of a Floodplain Development Permit application;

- (9) if a regulatory floodway has not been designated for a particular waterway, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the City's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the City;
- (10) maintain a record of all variance actions, including justification for their issuance, and report such variances to FEMA upon request or as otherwise required by law or regulation.

(c.) **Floodplain Development Permits:** In order to assure compliance with this Chapter, a Floodplain Development Permit is required for all development in the areas of special flood hazard, the issuance of which shall be in accordance with the following procedures:

- (1) **Application:** An application for a Floodplain Development Permit shall be made in writing, alone or in conjunction with the issuance of a building permit pursuant to Chapter I of this Title, on forms provided by the Public Services Division and filed with the Floodplain Administrator, which application must contain at least the following information and documentation:
 - (i) the name, address, and phone number of the applicant;
 - (ii) if different than the applicant, the name, address, and phone number of the record owner of the property according to the Real Property Records of Kerr County, Texas;
 - (iii) if the applicant and/or owner are not individuals, the name, address, and phone number of the person or people authorized to act on behalf of the applicant and/or owner in all matters relating to the application;
 - (iv) the complete lot and block or metes and bounds description of the property for which the application is made and, if available, the street address of the property;

- (v) if the applicant is not the owner of the property described in the application, a sworn statement from the owner or legal representative of the owner that the applicant has been authorized to make an application for a Floodplain Development Permit with respect to the property;
- (vi) a detailed description of the existing and/or proposed use of the property;
- (vii) plans, in duplicate, drawn to scale and sealed and signed by a licensed professional engineer or licensed professional surveyor showing:
 - a. the location, dimensions, and elevation of:
 - 1 proposed landscape alterations;
 - 2 existing and proposed structures;
 - 3 floodplain and floodway boundaries; and
 - b. the location of the items listed in subparagraph (vii),a, above, in relation to areas of special flood hazard; and
 - c. elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures; and
 - d. elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
- (viii) if the development includes the placement of fill in the floodplain, a grading plan certified by a professional engineer pre-development and post-development grades and elevations, which plan shows the location of the floodplain and/or floodway boundaries with dimensions and proposed structures;
- (ix) a certificate from a registered professional engineer that any nonresidential flood proofed structure shall meet the flood proofing criteria of Article 7-V-5(b.)(2);
- (x) a description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

- (xi) the non-refundable application fee established by the City Council for Floodplain Development Permit application.
- (2) **Only Completed Applications Considered:** No application for a Floodplain Development Permit shall be deemed to be completed only when all information and documentation set forth in Subsection (1), above, have been delivered to the Floodplain Administrator and the required application fee paid. If upon review of a Floodplain Development Permit application the Floodplain Administrator determines that the application is not complete, the Floodplain Administrator shall notify the applicant of that fact and indicate which information and/or documents are required in order for the application to be considered complete. The Floodplain Administrator shall have no duty to consider an incomplete application.
- (3) **Review Criteria of Application:** Upon receipt of a completed Floodplain Development Application, the Floodplain Administrator shall review the application based on all of the provisions of this Chapter and the following relevant factors:
- (i) the danger to life and property due to flooding or erosion damage;
 - (ii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iii) the danger that materials may be swept onto other lands to the injury of others;
 - (iv) the compatibility of the proposed use with existing and anticipated development;
 - (v) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (vi) 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;
 - (vii) 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;

- (viii) the necessity to the facility of a waterfront location, where applicable;
 - (ix) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (x) the relationship of the proposed use to the comprehensive plan for that area.
- (4) **Approval or Denial of Application:** Not later than sixty (60) days after an application for a Floodplain Development Permit is received and deemed complete by the Floodplain Administrator, the Floodplain Administrator shall grant or deny the issuance of a Floodplain Development Permit based on the requirements of this Chapter and the factors set forth in Subsection (3), above. If the Floodplain Administrator denies the issuance of a Floodplain Development Permit, the Floodplain Administrator must provide to the applicant written notice of the denial setting forth in detail the basis for the denial.
- (5) **Application Which Also Requires Variance:** Notwithstanding Subsection (4), above, if an applicant for a Floodplain Development Permit is also requesting a variance to the provisions of this Chapter with respect to the development of the same property, the Floodplain Administrator shall not be required to take action on the Floodplain Development Permit application until fifteen (15) days following the City Council decision regarding the application for the variance.
- (6) **Appeal from Decision of Floodplain Administrator:** The City Council shall hear and decide appeals that allege an error in any requirement, decision, or interpretation made by the Floodplain Administrator in the interpretation or enforcement of this Chapter with respect to the denial of a Floodplain Development Permit, which appeal shall be in accordance with the following procedures:
- (i) **Who May Appeal:** Any of person aggrieved by the decision of the Floodplain Administrator may appeal the decision to the City Council.
 - (ii) **Form of Appeal:** To be effective, the appeal must be made in writing and must contain at least the following:
 - a. a citation to the specific statute(s) and/or ordinance(s) which is(are) the subject of the appeal;

- b. the date on which the Floodplain Administrator rendered the denial which is the subject of the appeal to the appellant;
- c. a copy of the denial notice prepared by the Floodplain Administrator which is the basis for the appeal;
- d. the specific grounds upon which the appeal is based;
- e. a description of the property affected by the Floodplain Administrator's decision sufficient to identify the location and the boundaries of the property;
- f. the reason the person filing the appeal should be considered a person aggrieved by the decision;
- g. the signature of the person filing the appeal; and
- h. eight (8) copies of the site plan drawing submitted with the Floodplain Development Permit application.

(iii) Perfection of Appeal: An appeal pursuant to this Subsection (6) shall be deemed timely filed and perfected only if the notice of appeal:

- a. is filed not later than thirty (30) calendar days after the date on which the decision of the Floodplain Administrator was received by the appellant with:
 - 1* the City Clerk; and
 - 2* the Floodplain Administrator; and
- b. is accompanied by the filing fee established by the City Council; and
- c. contains all the information set forth in Paragraph (ii), above.

(iv) Preparation of Record: Upon receiving the notice of appeal, the Floodplain Administrator must immediately forward to the City Clerk all of the papers constituting the record of the action that is appealed.

(v) Date of Public Hearing: Unless a later date is set upon written request of the appellant, the City Council shall hold a public

hearing on an appeal under this Subsection (6) not later than thirty (30) days after the filing and perfection of the notice of appeal.

(vi) Decision of the City Council: After receiving all evidence and hearing all argument, the City Council shall:

- a. affirm the decision of the Floodplain Administrator; or
- b. upon a finding that the Floodplain Administrator made an error in any requirement, decision, or determination in denying the application:

- 1* reverse the decision of the Floodplain Administrator and issue the Floodplain Development Permit; or

- 2* remand the matter application to the Floodplain Administrator for reconsideration with specific directions of matters to be reconsidered.

(vii) Required Vote: The concurring vote of seventy-five percent (75%) of the membership of the City Council is required to modify or reverse the decision or determination of the Floodplain Administrator.

(7) Termination of Permits: A Floodplain Development Permit shall terminate and become null and void if actual start of construction of the new construction or substantial improvements described in the application does not commence within six months after issuance of the permit.

(d.) Variances: The City Council may grant a variance to the regulations of this Chapter in accordance with the following procedures:

(1) Application: An application for a variance shall be made in writing on forms provided by the Public Services Division and filed with the Floodplain Administrator. An application for a variance shall be deemed complete when all information on the application form is provided and the application is accompanied by the following:

- (i)** all fees established by the City Council for such matters; and
- (ii)** a description of the property to which the variance would apply sufficient to identify the location and the boundaries of the property;
- (iii)** the reason the person is requesting the variance;

- (iv) the signature, acknowledged by a notary public of:
 - a. the owner of the property; and
 - b. if different than the owner, the signature of the person requesting the variance; and
- (v) eight (8) copies of a site plan drawn to scale showing existing and proposed development of the property in question.

(2) **When Application to be Considered:** Upon filing of an application for a variance, the Floodplain Administrator shall request the City Manager place the application for request for variance on the next regular City Council agenda following twenty (20) days after the filing of a completed application for variance with the Floodplain Administrator. An application for variance shall not be deemed complete unless and until all items and fees required by subsection (1), above, have been delivered.

(3) **Grounds Applicable to Grant of Any Variance:** Except as authorized by Subsection (8), below, no variance shall be granted by the City Council until it makes the following findings:

- (i) considering the flood hazard, the requested variance is the minimum necessary to afford relief;
- (ii) the applicant has shown good and sufficient cause for the granting of the variance;
- (iii) failure to grant the variance would result in exceptional hardship to the applicant; and
- (iv) granting of a variance will not result in:
 - a. increased flood heights;
 - b. additional threats to public safety,
 - c. extraordinary public expense;
 - d. the creation of nuisances;
 - e. causing a fraud on or victimization of the public; or
 - f. a conflict with other existing local laws or ordinances.

- (4) **Form of Variance Granted:** Upon consideration of the factors noted in Subsection (3), above, and the purpose of this Chapter as set forth in Article 7-V-1(a.), the City Council may grant or deny a request for a variance. If granted, all variances shall be approved by ordinance of the City Council. In adopting an ordinance granting a variance, the City Council may include such conditions to the grant as it deems necessary to further the purpose and objectives of this Chapter.
- (5) **Variances Issued for Certain New Construction or Substantial Improvements:** Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section (c.)3) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) **Variances for Functionally Dependent Use:** Variances may be issued by the City Council for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- (i) the City Council makes the findings required by subsection (3), above; and
 - (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (7) **Variances in Floodway Generally Prohibited:** Notwithstanding anything to the contrary in this Article, variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (8) **Exception for Variances Regarding Historic Places:** Variances may be issued for the repair or rehabilitation of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this Chapter, provided:
- (i) the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure; and
 - (ii) the variance is the minimum necessary to preserve the historic character and design of the structure.

(9) **Notice Issued With Grant of Variance:** Any applicant to whom a variance is granted shall be given written notice by the Floodplain Administrator that:

- (i) the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for each \$100.00 of insurance coverage; and
- (ii) such construction below the base flood elevation increases risks to life and property.

Such notice shall be maintained with the record of all variances granted by the City Council.

(e.) **False Information or Statements:** It shall be unlawful for a person to intentionally, knowingly, or recklessly make a false statement or provide false information in an application for a Floodplain Development Permit or a variance from this Chapter.

Art. 7-V-5. PROVISIONS FOR FLOOD HAZARD REDUCTION

- (a.) **General Standards:** In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:
- (1) **Anchoring:** All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - (2) **Methods and Practices of Construction:** All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - (3) **Use of Flood Resistant Materials:** All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
 - (4) **Flood Proofing of Mechanical Systems:** 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) **Water Supply Systems:** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - (6) **Sanitary Sewer Systems:** New and 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.
 - (7) **On-Site Waste Disposal Systems:** Installation of on-site waste disposal systems shall be prohibited within areas of special flood hazard.
- (b.) **Specific Standards:** In all areas of the floodplain where base flood elevation data has been provided as set forth in Article 7-V-3(b.), Article 7-V-4(b.)(8), or Article 7-V-5(c.)(4), the following additional construction standards apply to new construction or substantial improvements within the floodplain:
- (1) **Residential Construction:** New construction and substantial improvement of any residential structure must be constructed with the lowest floor (including basement) elevated to at least one foot (1.0') above the base flood elevation. In addition to such other requirements as may be

set forth in Chapter I of this Title, construction of a residential structure to which this Section (b.) applies shall not proceed beyond completion of the finished slab until a registered public land surveyor has certified on a form approved by and filed with the Floodplain Administrator that the lowest floor (including basement) is in fact elevated to or above the base flood elevation for the property.

- (2) **Nonresidential Construction:** New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either:
- (i) have the lowest floor (including basement) elevated to at least one foot (1.0') above the base flood elevation; or
 - (ii) be designed so that the portion of the structure below the base flood elevation, together with attendant utility and sanitary sewer facilities, is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A registered professional engineer shall develop and/or review structural design, specifications, and plans for the construction, and shall certify to the Floodplain Administrator that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification, which includes the specific elevation in relation to mean sea level to which such structures are flood proofed, shall be provided to and maintained by the Floodplain Administrator on forms prescribed by the Floodplain Administrator.

- (3) **Enclosures:** No building enclosure, including building enclosures with breakaway walls, shall be constructed below the Base Flood Elevation.
- (4) **Manufactured Homes Located in Zone A:** All manufactured homes to be placed within Zone A on the City's FIRM shall be installed in accordance with the following regulations:
- (i) generally, the manufactured home must be installed using methods and practices which minimize flood damage;
 - (ii) the manufactured home must be elevated to resist flotation, collapse, or lateral movement, which elevation must, as a minimum, be in accordance with Art. 7-V-5(b.)(1);

- (iii) in addition to applicable State and local anchoring requirements for resisting wind forces, the manufactured home must be anchored using methods which resist flotation, collapse, or lateral movement, including, but not limited to, use of over-the-top or frame ties to ground anchors.

(5) **Manufactured Homes Located in Zones A1-30, AE or AH:** All manufactured homes to be placed or substantially improved within Zones A1-30, AH, or AE on the City's FIRM must be constructed in accordance with the following regulations:

- (i) the manufactured home must be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and otherwise be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement if the manufactured home is located:
 - a outside of a manufactured home park;
 - b in a new manufactured home park or subdivision;
 - c in an expansion to a new 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 a result of a flood.
- (ii) if the manufactured homes are being placed or substantially improved on sites within an existing manufactured home park or subdivision and are not otherwise subject to the provisions of paragraph (i), above, the manufactured home must be elevated so that either:
 - a the lowest floor of the manufactured home is at or above the base flood elevation; 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 thirty-six inches (36.0") in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(6) **Compliance with Zoning Code:** To the extent of any conflict between the development standards for manufactured housing set forth in this Chapter and the development standards set forth in Title 11, Chapter I of this Code:

(i) the most restrictive standards shall apply; and

(ii) whenever Title 11, Chapter I of this Code requires that a manufactured home be attached to the real property by a permanent foundation, such requirement shall apply, notwithstanding a lesser anchoring regulation allowed by this Chapter.

(c.) **Standards for Placement of Fill in Floodplain:** The placement of fill in the floodplain pursuant to a Floodplain Development Permit shall be in accordance with the following minimum specifications:

(1) The fill must be placed in a manner to obtain a minimum of 90% of the maximum soil compaction as determined by the standard proctor test in order to reduce settlement.

(2) Fill material must be soil or rock, free of wood or construction debris.

(3) Fill material shall not contain organic material which may result in decomposition and settlement.

(4) Side slopes which are not stabilized in accordance with standard engineering practices shall not exceed a grade of three feet (3.0') horizontal to one foot (1.0') vertical.

(5) No portion of the fill material shall be placed in the regulatory floodway.

(6) Provisions must be made to prevent fill from eroding or moving laterally into the regulatory floodway.

(d.) **Standards for Proposed Subdivisions:** In addition to the regulations set forth in Chapter IV of Title 10 of this Code regarding the subdivision of land within the City, the following regulations shall apply to the subdivision of land which is regulated by this Chapter:

(1) **Consideration of Purposes of this Chapter:** In addition to the intent and purposes set forth in Article 10-IV-1(A), the approval by the Planning and Zoning Commission of a plat for the subdivision of land (including, but not limited to, a Manufactured Home Subdivision), and, as required by Article 11-I-10(d.) (3), the approval of a development site plan for a

Manufactured Home Rental Community by the City Council shall be consistent with Article 7-V-1 if part of the land being subdivided and/or developed is located within a special flood hazard zone.

- (2) **Location of Floodplain and Floodway:** No preliminary plat and/or final plat indicating a proposed subdivision of property which is in part or in its entirety located within a floodplain and/or floodway may be approved in accordance with Title 10, Chapter IV of this Code until the preliminary plat and/or final plat drawing contain the horizontal location of the floodplain and/or floodway boundary affecting the property with sufficient dimensions to locate said boundary on the ground.
- (3) **Base Flood Elevation Indicated on Plat:** In addition to the requirements set forth in Chapter IV of Title 10 of this Code, before the Planning and Zoning Commission may approve a final plat of property, all or part of which is located in a special flood hazard zone, the Base Flood Elevation for each lot of the proposed subdivision or each manufactured home site located in a Manufactured Home Rental Community which is located in a special flood hazard zone must be determined and indicated on the final plat or development site plan, whichever is required. If the BFE for the property has not been established in accordance with Article 7-V-3(b), the owner or developer of the proposed subdivision or Manufactured Home Rental Community shall generate sufficient data for the Floodplain Administrator to determine the BFE for such property in accordance with Article 7-V-4(b)(8).
- (4) **Drainage Requirements:** All proposed subdivisions and Manufactured Home Rental Communities shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) **Location of Public Utilities:** All proposed subdivisions and Manufactured Home Rental Communities must locate all public utilities and facilities such as sanitary sewer, natural gas, electrical and water systems in such a manner as to minimize or eliminate flood damage.
- (e.) **Standards for Areas in the 100 Year Floodplain with No Base Flood Elevation Determined (Zone A):** No building permit shall be issued for construction of property located within a special flood hazard zone until the proper detailed methods have been applied by a professional engineer to determine the BFE for the property and a Letter of Map Revision or Letter of Map Amendment has been obtained from FEMA.
- (f.) **Floodways:** Encroachment into a regulatory floodway with fill, new construction, substantial improvements or other development is prohibited unless:

- (1) a registered professional engineer, based on a competent engineering study certified by the engineer, demonstrates through hydrologic and hydraulic analysis performed in accordance with standard engineering practice to the satisfaction of the Floodplain Administrator that the proposed encroachment will not result in any increase in flood levels within the City during the occurrence of the base flood discharge; or
- (2) the City or the person wishing to place the encroachment in the floodway has applied for a conditional FIRM and floodway revision from FEMA and has received consent from FEMA to allow encroachments within the floodway.

If an encroachment into a regulatory floodway is permitted in accordance with Subsection (1), above, the new construction or substantial improvements placed within the floodway shall comply with all applicable flood hazard reduction provisions of this Chapter.

Art. 7-V-6. NUISANCES WITHIN A SPECIAL FLOOD HAZARD AREA

- (a.) **Certain Nuisances Defined:** Notwithstanding anything to the contrary set forth in this Code, the following activities occurring within a special flood hazard area constitute a danger to the health, safety, and welfare of the residents of the City, are hereby defined as public nuisances, and are prohibited within any Special Flood Hazard Area:
- (1) the manufacture, processing, blending, mixing, refining, or distribution of the following products as defined in the Standard Fire Prevention Code:
 - (i) explosives;
 - (ii) blasting agents;
 - (iii) flammable or combustible gases, solids or liquids, hazardous chemicals, liquified petroleum gases, and petroleum products such as gasoline and diesel; and
 - (iv) road construction materials containing petroleum products;
 - (2) storage of the products listed in Subsection (1), above; except that the indoor storage of incidental cleaning products, or the retail sale of packaged products off-the-shelf at normal retail sales outlets, is allowed;
 - (3) the construction and operation of on-site sewage disposal systems.
- (b.) **Defense: Prior Use of Property:** It shall be a defense to prosecution pursuant to Section (a.), above, if:
- (1) property located within a special flood hazard zone was being used for a purpose defined as a nuisance in Section (a.), above, before January 26, 1996, has been continuously used for such purpose thereafter, and such use was:
 - (i) a permitted use pursuant to the City Code as January 26, 1996; or
 - (ii) constituted a lawful non-conforming use under the City's Zoning Code on January 26, 1996; and
 - (2) property which becomes located within a special flood hazard area as the result of an amendment to the City's FIRM was being used for a purpose defined as a nuisance in Section (a.), above, before the effective date of the amended FIRM, has been continuously used for such purpose thereafter, and such use was:

- (i) a permitted use pursuant to the City's Zoning Code as of the effective date of the FIRM; or
- (ii) constituted a lawful non-conforming use under the City's Zoning Code on the effective date of the FIRM.

Art. 7-V-7. PENALTIES

- (a.) Criminal Penalties:** The penalty for violation of this Chapter shall be in accordance with the general penalty provisions contained in Article 1-I-8 of this Code.
- (b.) Civil Remedies:** In addition to any other criminal or civil remedies that may be available to the City, the City may seek and obtain an injunction against the owner or owner's representative with control over the property in accordance with Chapter 54 of the Texas Local Government Code, as amended.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance, including, but not limited to, Ordinance Nos. 87-14, 94-28, 95-30, and 96-01, are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Kerrville, Texas, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. This ordinance shall be effective on October 1, 1998; provided, however, this ordinance shall not be applicable to new construction or substantial improvements for which the start of construction, as defined in Section One, above, was before the effective date of this ordinance.

SECTION FIVE. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Clerk is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this the 8th day of September, 1998.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 8th day of September, 1998.

Ben R. Low, Mayor

ATTEST:

Sheila L. Brand, City Clerk

APPROVED AS TO FORM:

Kevin B. Laughlin, City Attorney