

ORDINANCE NO. ZRR-2812

AN ORDINANCE RELATING TO THE UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF OVERLAND PARK, KANSAS, AMENDING AND REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 18.110.250, 18.110.255, 18.110.260, 18.110.455, 18.110.505, 18.360.410, 18.360.420, 18.360.430, 18.360.440, 18.360.450, 18.360.460 AND 18.360.470; ADDING NEW OVERLAND PARK MUNICIPAL CODE SECTION 18.360.405; AND REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 18.110.175 AND 18.110.510.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. Overland Park Municipal Code Section 18.110.250 is hereby amended to read as follows:

18.110.250 Floodplain or 100-year floodplain

~~“Floodplain” or “100-year floodplain” means that land area susceptible to being inundated by water, or more specifically the 100-year floodplain has a one percent chance of being inundated by water in any given year. The 100-year floodplain includes the Special Flood Hazard Areas asis~~ defined in ~~ChapterSection~~ 18.360.410.

SECTION 2. Overland Park Municipal Code Section 18.110.255 is hereby amended to read as follows:

18.110.255 Floodway

~~“Floodway” means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge a flood having a one percent chance of being equaled or exceeded in any given year without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the floodplainis~~ defined in Section 18.360.410.

SECTION 3. Overland Park Municipal Code Section 18.110.260 is hereby amended to read as follows:

18.110.260 Flood fringe (formerly Floodway fringe)

~~“Flood fringe” is that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year)~~defined in Section 18.360.410.

SECTION 4. Overland Park Municipal Code Section 18.110.455 is hereby amended to read as follows:

18.110.455 100-year frequency flood

~~“100-year frequency flood” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers or other inland water, that has a one percent chance of occurrence each year~~ is defined in Section 18.360.410.

SECTION 5. Overland Park Municipal Code Section 18.110.505 is hereby amended to read as follows:

18.110.505 Base flood elevation (formerly Regulatory flood elevation)

“Base flood elevation” ~~means elevation indicated in the Flood Insurance Study as the elevation of the 100-year flood~~ is defined in Section 18.360.410.

SECTION 6. Overland Park Municipal Code Section 18.360.405 is hereby added to read as follows:

18.360.405 Flood Insurance Rate Map

The Flood Insurance Rate Maps dated August 3, 2009, and subsequent letters of map change approved by the Floodplain Administrator are hereby adopted by the City of Overland Park as the official map of the City which delineates both the Special Flood Hazard Areas and the risk premium zones applicable to the City. The Director of Planning and Development Services shall retain the Flood Insurance Rate Maps on file and have them available and open to inspection at all reasonable business hours.

SECTION 7. Overland Park Municipal Code Section 18.360.410 is hereby amended to read as follows:

18.360.410 Definitions

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

"100-year Flood" see "base flood."

"Accessory structure" means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this Chapter or a request for a variance.

"Appurtenant Structure" means the same as "accessory structure."

"Area of shallow flooding" means a designated AO or AH zone on a City's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (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 one percent or greater chance of flooding in any given year.

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

"Base flood elevation" means elevation indicated in the Flood Insurance Study or approved by the Floodplain Administrator as the water surface elevation of the base flood.
see "flood elevation determination."

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

"Building" see "structure."

"City" means City of Overland Park, Kansas.

"Chief Engineer" means the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charge with the authority to implement and administer laws, ordinances and regulations for that community.

"Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"Critical Facilities" means structures which the City identifies as essential to the health or welfare of the population and that are especially important following a disaster.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, stream channelization, bank stabilization, or storage of equipment or materials.

"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.

"Eligible Community" or "Participating Community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"Existing construction" means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the City's FIRM which was September 30, 1977. "Existing structures" may also be referred to as "existing construction."

"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 the City.

"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).

~~"Existing structures" means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing structures" may also be referred to as "existing construction."~~

"FEMA" means the Federal Emergency Management Agency.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

~~"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year (Base Flood Elevation).~~

"Flood elevation study" means an examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations.

"Flood fringe" means that part of the Special Flood Hazard Area outside the floodway encroachment lines, but still subject to inundation by the base flood.

"Flood Insurance Rate Map (FIRM)" means an official map of the City, on which the Administrator has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the City.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain" or "100-year floodplain" means that land area susceptible to being inundated by

water (see "flooding") or more specifically the 100-year floodplain has a one percent chance of being inundated by water in any given year. For this Chapter the "Base Flood" is the 100-year floodplain, which includes the Special Flood Hazard Areas.

~~"Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see "flooding").~~

"Floodplain Administrator" refers to the party designated in Section 18.360.440 (B) to administer and implement the provisions of this Chapter for the City of Overland Park.

"Floodplain development permit" means a signed document from a designated City official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"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 floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

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

"Floodway" or "Regulatory floodway" means ~~the~~that part of the Special Flood Hazard Area consisting of a river channel ~~of a river~~ or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

"Floodway encroachment lines" means the lines marking the limits of floodways on federal, state and local floodplain maps.

~~"Floodway fringe" see "flood fringe."~~

"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 bridge openings and the hydrological effect of urbanization of the watershed.

"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: (a) 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; (b) 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; (c) 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 (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior; or (2) directly by the Secretary of the Interior in states without approved programs.

"Letter of Map Changes" (LOMCs) are documents issued by FEMA that revise or amend the flood hazard information shown on the FIRM without requiring the FIRM to be physically revised and republished. LOMCs include documents such as Letter of Map Amendments (LOMAs) , Letter of Map Revisions (LOMRs), Letter of Map Revisions based on fill (LOMR-F) and the conditional status of each document.

"Lowest adjacent grade" means the lowest elevation of the ground surface next to the walls of an existing or proposed structure.

"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 floodproofing design requirements of this Chapter.

"Manufactured home" means a structure; which is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. Section 5403. It is transportable in one or more sections; ~~that is~~ built on a permanent chassis and ~~is~~ designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

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

"Map" means the Flood Insurance Rate Map (FIRM) for the City issued by the Federal Emergency Management Agency (FEMA).

"Market value" or "Fair market value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean sea level" means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on the City's Flood Insurance Rate Map (FIRM) are referenced.

"New construction" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulations adopted by the City 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 lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the City.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Participating Community" also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

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

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Reasonably safe from flooding" refers to the standard of construction established by the City which is based on FEMA's Technical Bulletin 10-01 dated May 2001, as amended, the City's adopted edition of the International Building Code (IBC), and/or written construction standards adopted by the Floodplain Administrator to bring the City into compliance current FEMA requirements.

"Recreational vehicle" means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy a violation" means to bring the structure or other development into compliance with federal, state, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"Residential construction" for the purposes of this Chapter means a building or portion thereof regulated by the City's adopted edition of the International Residential Code (IRC) which includes single family dwellings and duplexes but does not include apartment complexes. It also includes the site work or grading associated with the building construction activity.

"Special Flood Hazard Area" (SFHA) is the land in the floodplain within the City subject to a one percent or greater chance of flooding in any given year and shown on a FIRM as zones (unnumbered or numbered) A, AO, AE, or AH.

"Start of construction" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory 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.

"State Coordinating Agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

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

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

"Substantial-improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures, which have incurred "substantial-damage," regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variance" means a variation from a specific requirement in this ordinance applicable to a specific piece of property. A "variance" from Chapter 18.360 of the Unified Development Ordinance, floodplain management requirements does not apply to grant of relief by the City from the terms of a floodplain management regulation. Flood insurance requirements which remain in place for any varied use or structure and cannot be varied by the City.

"Violation" means the failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this Chapter is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain riverine areas.

SECTION 8. Overland Park Municipal Code Section 18.360.420 is hereby amended to read as follows:

18.360.420 Statutory authorization and findings of fact

A. Statutory Authorization

1. Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on April 27, 2009.

2. Kansas Statutory Authorization

The Legislature of the State of Kansas has in K.S.A. 12-741 et seq. as amended, and specifically in K.S.A. 12-766 as amended, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the Governing Body of Overland Park, Kansas, ordains as follows:

B. Findings of Fact

1. Flood Losses Resulting from Periodic Inundation

The Special Flood Hazard Areas of Overland Park, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

2. General Causes of the Flood Losses

These flood losses are caused by: (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

3. Methods Used to Analyze Flood Hazards

The Flood Insurance Study (FIS) that is the basis of this Chapter uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

- a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this Chapter is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this Chapter. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated August 3, 2009, as amended, and any future revisions thereto.
- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and over bank areas to convey the regulatory base flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.
- e. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

SECTION 9. Overland Park Municipal Code Section 18.360.430 is hereby amended to read as follows:

18.360.430 General provisions

A. Lands to Which Chapter Applies

This Chapter shall apply to all lands within the jurisdiction of Overland Park identified as the Special Flood Hazard Area which includes numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated August 3, 2009, of the Flood Insurance Rate Map (FIRM) as amended, and any future revisions thereto. Some provisions of Section 18.360.440 (C) also apply to areas formerly included in the Special Flood Hazard Area. In all areas covered by this Chapter, no development shall be permitted except through the issuance of a floodplain development permit, granted by the Floodplain Administrator or the duly designated representative under such safeguards and restrictions as the Governing Body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the City, and as specifically noted in Section 18.360.450.

B. Compliance

No development located within the Special Flood Hazard Areas of the City shall be located, extended, converted, or structurally altered without full compliance with the terms of this Chapter and other applicable regulations.

C. Abrogation and Greater Restrictions

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

D. Interpretation

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements, shall be liberally construed in favor of the Governing Body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

E. Warning and Disclaimer of Liability

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Chapter does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This Chapter shall not create a liability on the part of Overland Park, any officer or employee thereof, for any flood damages that may result from reliance on this Chapter or any administrative decision lawfully made thereunder.

F. Severability

If any section; clause; provision; or portion of this Chapter is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this Chapter shall not be affected thereby.

SECTION 10. Overland Park Municipal Code Section 18.360.440 is hereby amended to read as follows:

18.360.440 Administration

A. Floodplain Development Permit

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in [Section](#) 18.360.430 A. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

B. Designation of Floodplain Administrator

The Director of Planning and Development Services or his/her designee is hereby appointed to administer and implement the provisions of this Chapter as "Floodplain Administrator."

C. Duties and Responsibilities of Floodplain Administrator

Duties of the Floodplain Administrator for properties within the Special Flood Hazard Areas shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this Chapter have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from federal, state, or local governmental agencies from which prior approval is required by federal, state, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;

5. Assure notification of affected adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and retain records of such notification for the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained ~~maintenance is provided~~ within the altered or relocated portion of any watercourse ~~so that the flood-carrying capacity is not diminished~~;
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed; and
9. When floodproofing techniques are utilized for a particular non-residential structure, the Floodplain Administrator shall require certification from a registered professional engineer or architect.

In addition, the Floodplain Administrator shall establish requirements for building permits on property removed from the Special Flood Hazard Area to verify structures meet the City's standards for "reasonably safe from flooding."

D. Application for Floodplain Development Permit

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

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;

6. Identify the existing Base Flood Elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the Floodplain Administrator such as:
 - a. Typical valley cross-sections and profile showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be affected by the proposed development and elevation of the 100-year flood.
 - b. Plan or surface view showing elevations or contours of the ground; fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities, and other data that will assist the Floodplain Administrator make a determination of flooding.
8. Be accompanied by plans and specifications for proposed construction;
9. Within Special Flood Hazard Areas, be accompanied by elevations of the lowest floor including basement or in the case of floodproofed nonresidential structures, the elevation to which it has been floodproofed. Documentation or certification of such elevations will be maintained by the Floodplain Administrator; and
10. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

SECTION 11. Overland Park Municipal Code Section 18.360.450 is hereby amended to read as follows:

18.360.450 Provisions for flood hazard reduction

A. General Standards

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within Special Flood Hazard Areas unless the conditions of this Section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the Base Flood Elevation is not provided. Development within unnumbered A zones is subject to all provisions of this Chapter. If Flood Insurance Study data is not available or flood studies have not been completed, ~~all necessary information shall be provided by~~ a professional engineer licensed in the State of Kansas shall obtain, review and reasonably utilize any base flood elevation or floodway data currently available from federal, state or other sources. Conclusive engineering data which

~~establishes the Base Flood Elevations and floodway shall then be and submitted by the professional engineer to the City for review of Base Flood Elevations and floodway data.~~

3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within the Special Flood Hazard Area 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. Additional conditions are established in Section 18.360.450 A (4).
4. Grading changes within the ~~Special Flood Fringe Hazard Area or alterations, modifications or relocation of a watercourse~~ must not cause an increase in the Base Flood Elevation unless the Floodplain Administrator has expressly issued a written waiver of this requirement and acknowledges the rise. ~~This standard does not apply to Base Flood Elevations that rise solely within the limits of the applicant's property.~~
5. The boundaries of the Floodway and Flood Fringe shall be determined by reviewing the Flood Insurance Rate Map (FIRM) and amendments thereto, the Flood Insurance Study (FIS) or other available data. Where interpretation is needed to locate the boundaries of the Floodway or Flood Fringe, the Floodplain Administrator may make the necessary interpretation when sufficient data is available. If the interpretation is contested, the applicant may apply to FEMA for a Letter of Map Change to clarify the location of the Floodway and/or Flood Fringe. If property near the Flood Fringe is lower than the Base Flood Elevation, this property shall be considered part of the Floodway or Flood Fringe for the purposes of this Chapter, regardless of the FIRM designation. If the FIRM indicates property is within the Floodway or Flood Fringe and such property is higher than the Base Flood Elevation, the FIRM designation shall establish the requirements of this Chapter until a Letter of Map Change revises the FIRM.
6. The Floodplain Administrator is authorized to request a Letter of Map Change or Physical Map Revision for any work performed in the Special Flood Hazard Area in order to maintain proper records and assist in the notification process.
7. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
 - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - b. Construction with materials resistant to flood damage;

- c. Utilization of methods and practices that minimize flood damages;
- d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination from them during flooding; and

f. All additions constructed outside the existing walls of a structure in the Special Flood Hazard Area shall be constructed with the lowest floor elevated two (2) feet above the B.F.E., except non-residential structures are allowed to flood proof to two (2) feet above B.F.E. This includes minor additions and substantial improvements for pre-firm and post-firm structures.

fg. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within Special Flood Hazard Areas are required to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards;
- (4) All proposals for development include within such proposals Base Flood Elevation data; ~~and~~
- (5) ~~Lots in new residential subdivisions must be outside the Special Flood Hazard Area.~~ New subdivision plats or rezonings which contain Special Flood Hazard Areas, cannot create a new lot within the Special Flood Hazard Area which would allow constructing a residential dwelling;
- (6) New subdivision plats with only one public street for access during any phase of platting, shall meet one of the following:

- a) The public street, including the street's intersection to existing streets, shall be constructed outside the Special Flood Hazard Areas; or
- b) The depth of storm water for public streets constructed in the Special Flood Hazard Area shall meet the City's most current storm water design criteria, including the street's intersection to existing streets, or a deviation from the City's design criteria for storm water depths in public streets must be approved by the Fire Department; or
- c) A secondary emergency access route is provided, as approved by the Fire Department;

(7) Critical Facilities:

- a) All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, emergency aviation facilities, and schools shall be protected from the 0.2 percent annual chance flood event, also referred to as the 500-year flood event, by either:
 - 1) Elevating the structure, along with its attendant utility and sanitary facilities, above the 500-year flood level or,
 - 2) Flood proofing the structure and its attendant utility and sanitary facilities below the 500-year flood level. Habitable spaces must be constructed so the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If a space is non-habitable, other means of flood proofing may be accomplished provided the contents of the structure cannot be damaged by storm water. A professional engineer or registered architect shall certify that the standards of this subsection are satisfied. Certification shall be provided to the floodplain administrator as set forth in 18.360.440 C (7)(8)(9).
- b) All critical facilities shall have access routes that are above the elevation of the 500-year flood.

c) No critical facilities shall be constructed in any designated floodway, except sanitary sewer and water supply facilities.

8. Storage, Material, and Equipment

- a. The storage or processing of materials within the Special Flood Hazard Area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
- b. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

9. Nonconforming Use

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the Chapter, but which is not in conformity with the provisions of this Chapter, may be continued subject to the following conditions:

- a. If such structure, use, or utility service is discontinued for six consecutive months, any future use of the building shall conform to this Chapter.
- b. No such use or substantial improvement of that use shall be expanded, changed, enlarged or altered in any way which increases the nonconformity.
- c. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

d. Cumulative Improvement

A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the value of the improvement and the cumulative value of all work requiring a permit within the previous five calendar years does not exceed fifty (50) percent of the structure's current market value. The value of the improvement shall not include any exclusions allowed by current FEMA recommendations. If the cumulative value of the improvements exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with the requirements of this Chapter except

residential structures shall be elevated to one (1) foot above the base flood elevation (instead of two feet) and non-residential structures shall be elevated/floodproofed to one (1) foot above the base flood elevation (instead of two feet).

B. Specific Standards

In all areas identified as numbered and unnumbered A zones, AE, and AH Zones (also known as the Special Flood Hazard Areas), where Base Flood Elevation data have been provided, as set forth in Section 18.360.450 A(2), the following provisions are required:

1. Residential Construction

New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of two (2) feet above Base Flood Elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

In addition, new construction of any residential structure shall have the lowest adjacent grade a minimum of one (1) foot above the energy grade line of the base flood for fully developed conditions upstream.

2. Non-Residential Construction

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of two (2) feet above the Base Flood Elevation or, together with attendant utility and sanitary facilities, be floodproofed to a minimum of two feet above the Base Flood Elevation so ~~that below the Base Flood Elevation~~ the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the Floodplain Administrator as set forth in Section 18.360.440 C(7)(8)(9).

3. Require for all new construction and substantial-improvements that fully enclosed areas below the lowest floor are used solely for parking vehicles, building access or storage in an area other than a basement and that is/are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (b) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

C. Manufactured Homes

1. All manufactured homes to be placed within ~~all~~the Special Flood Hazard Area unnumbered and numbered A zones, AE, and AH zones, on the City's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and City anchoring requirements for resisting wind forces.
2. Require manufactured homes that are placed or substantially improved within ~~unnumbered or numbered A zones, AE, and AH zones, the Special Flood Hazard Areas~~ on the City's FIRM on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to and existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial-damage as the result of a flood;

be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of two (2) feet above the Base Flood Elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
3. Require that manufactured ~~structures~~homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within ~~all unnumbered and numbered A zones, AE and AH zones, the Special Flood Hazard Area~~ on the City's FIRM, that ~~are not residential structures and~~ are not subject to

the provisions of Section18.360.450 C(2) of this Chapter, be elevated so that either:

- a. The lowest floor of the manufactured structurehome is a minimum of two (2) feet above the Base Flood Elevation; or
- b. The manufactured structurehome chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. ~~The manufactured structure must be flood proofed to a minimum of two (2) feet above the Base Flood Elevation.~~ The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

D. Areas of Shallow Flooding (AO and AH zones)

Located within Special Flood Hazard Areas described in Section 18.360.430 A are areas designated as AO zones. These Special Flood Hazard Areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

1. AO Zones

- a. All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the City's FIRM (at least two (2) feet if no depth number is specified).
- b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the City FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

2. AH Zones

- a. The specific standards for all Special Flood Hazard Areas where Base Flood Elevation has been provided shall be required as set forth in Section 18.360.450 B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

E. Floodway

Located within Special Flood Hazard Areas established in Section 18.360.430 A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The City shall select and adopt a ~~regulatory~~ floodway based on the principle that the area chosen for the ~~regulatory~~ floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
2. The City shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted ~~regulatory~~ floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the City during the occurrence of the base flood discharge.
3. If Section 18.360.450 E(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Section 18.360.450.
4. In unnumbered A zones, the City shall obtain, review, and reasonably utilize any Base Flood Elevation or floodway data currently available from federal, state, or other sources as set forth in Section 18.360.450 A(2).

F. Recreational Vehicles

Recreational vehicles placed in compliance with Chapter 7.22 on sites within ~~all unnumbered and numbered A Zones, AE, AH, and AO Zones~~ the Special Flood Hazard Area on the City's FIRM shall either:

1. Be on the site for fewer than 180 consecutive days; or
2. Be fully licensed and ready for highway use*; or
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this Chapter.

*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

SECTION 12. Overland Park Municipal Code Section 18.360.460 is hereby amended to read as follows:

18.360.460 Permitted uses; prohibited uses

A. Floodway

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway to the extent they are not prohibited by any applicable law, ordinance or regulation. No use shall create ANY increase in the Base Flood Elevation. The following uses are permitted in accordance with standards established in this Chapter:

1. Agricultural uses such as general farming, pastures, nurseries, forestry.
2. Residential uses such as lawns, gardens and yard areas, however, residential parking areas shall not be permitted.
3. Boat ramps.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

5. Utilities.

Any use not enumerated above is prohibited within the floodway.

B. Flood Fringe

Any uses allowed in the zoning district shall be permitted within the flood fringe in accordance with standards established in this Chapter EXCEPT:

1. Hazardous material storage and/or handling.
2. Parking for residential and apartment uses.

SECTION 13. Overland Park Municipal Code Section 18.360.470 is hereby amended to read as follows:

18.360.470 Floodplain management variance procedures

A. Establishment of Appeal Board

The Board of Zoning Appeals as established by Overland Park shall hear and decide appeals and requests for variances from the floodplain management requirements of this

Chapter. All requests for appeals and variances shall follow the procedures established in Chapter 18.140.

B. Responsibility of Board of Zoning Appeals

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Board of Zoning Appeals, as defined in [Section 18.360.470 A](#).

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

C. Further Appeals

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

D. Variances for Historic Places

Variances may be issued for the reconstruction, [repair](#), rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section [and the variance is the minimum necessary to preserve the historic character and design of the structure](#).

E. Floodplain Management Variance Criteria

The variance criteria set forth in this Section are based on the general principles applicable to zoning variances set forth in Section 18.140.350, together with other considerations that pertain to the special nature of a variance from flood control regulations designed to help protect the citizens of the City of Overland Park from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the [regulatory base](#) flood elevation are so serious that variances from the flood elevation or from other requirements in the flood chapter should be quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this Chapter are more detailed and contain multiple specific provisions that must be met before a variance can be properly granted (conditions) and other circumstances that must be evaluated and weighed and balanced in considering whether to grant a variance (criteria). The conditions and criteria established in this ordinance are designed to screen out those situations in which alternatives other than a variance are more appropriate. In addition to the conditions established in [ChapterSection 18.140.350](#), the Board of Zoning Appeals shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this Chapter, Title 18 or the Overland Park Municipal

Code, including the following criteria and the additional conditions set forth in subsection (F) below:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the City;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets, and bridges.

F. Conditions for Approving Floodplain Management Variances

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provided the proposed activity will not preclude the structure's continued historic designation.

3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause; (b) determination that failure to grant the variance would result in exceptional hardship to the applicant; and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. The City shall notify the applicant in writing over the signature of a City official that: (a) the issuance of a variance to construct a structure below Base Flood Elevation will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and (b) such construction below the Base Flood Elevation increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Chapter.
7. Upon consideration of the factors listed above and the purposes of this Chapter, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Chapter.
8. A variance granted by the Board of Zoning Appeals or City for regulations in this Chapter does not apply to flood insurance requirements which remain in place for any varied use or structure and cannot be varied by the City.

SECTION 14. Existing Overland Park Municipal Code Sections 18.110.175, 18.110.250, 18.110.255, 18.110.260, 18.110.455, 18.110.505, 18.110.510, 18.360.410, 18.360.420, 18.360.430, 18.360.440, 18.360.450, 18.360.460 and 18.360.470 are hereby repealed.

SECTION 15. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

PASSED by the City Council this ___ day of _____, 2009.

APPROVED by the Mayor this ___ day of _____, 2009.

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

J. Bart Budetti
Senior Assistant City Attorney