

(Published in the Topeka Metro News June 26, 2023)

**ORDINANCE NO. 20425**

AN ORDINANCE introduced by Acting City Manager Richard U. Nienstedt, concerning floodplain management, amending §§ 17.30.010 through 17.30.040, 17.30.070, 17.30.090, 17.30.150, 17.30.170 through 17.30.220, 17.30.250 and 17.30.260 of the Topeka Municipal Code and repealing original sections

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

Section 1. That section 17.30.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**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 the same as “appurtenant structure.”

Actuarial Rates. See “Risk premium rates.”

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

“Area of shallow flooding” means a designated AO or AH zone on a community’s flood insurance rate map (FIRM) with a one percent or greater annual chance of

30 flooding to an average depth of one to three feet where a clearly defined channel does  
31 not exist, where the path of flooding is unpredictable and where velocity flow may be  
32 evident. Such flooding is characterized by ponding or sheet flow.

33 “Area of special flood hazard” is the land in the floodplain within a community  
34 subject to a one percent or greater chance of flooding in any given year.

35 “Base flood” means the flood having a one percent chance of being equaled or  
36 exceeded in any given year.

37 “Base flood elevation” means the elevation of the surface of the water during a  
38 one percent annual chance flood event.

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

41 Building. See “Structure.”

42 “Chief Engineer” means the Chief Engineer of the Division of Water Resources,  
43 Kansas Department of Agriculture.

44 “Chief executive officer” or “chief elected official” means the official of the  
45 community who is charged with the authority to implement and administer laws,  
46 ordinances, and regulations for that community.

47 “Community” means any state, or area or political subdivision thereof, which has  
48 authority to adopt and enforce floodplain management regulations for the areas within  
49 its jurisdiction.

50 “Development” means any manmade change to improved or unimproved real  
51 estate, including but not limited to buildings or other structures, levees, levee systems,  
52 mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of  
53 equipment or materials.

54 “Elevated building” means, for insurance purposes, a nonbasement building  
55 which has its lowest elevated floor raised above ground level by foundation walls, shear  
56 walls, posts, piers, pilings, or columns.

57 “Eligible community” or “participating community” means a community for which  
58 the Administrator has authorized the sale of flood insurance under the National Flood  
59 Insurance Program (NFIP).

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

64 “Existing manufactured home park or subdivision” means a manufactured home  
65 park or subdivision for which the construction of facilities for servicing the lots on which  
66 the manufactured homes are to be affixed (including, at a minimum, the installation of  
67 utilities, the construction of streets, and either final site grading or the pouring of  
68 concrete pads) is completed before the effective date of the floodplain management  
69 regulations adopted by a community.

70 “Expansion to an existing manufactured home park or subdivision” means the  
71 preparation of additional sites by the construction of facilities for servicing the lots on  
72 which the manufactured homes are to be affixed (including the installation of utilities, the  
73 construction of streets, and either final site grading or the pouring of concrete pads).

74 “Flood” or “flooding” means a general and temporary condition of partial or  
75 complete inundation of normally dry land areas from: (1) the overflow of inland waters;  
76 (2) the unusual and rapid accumulation or runoff of surface waters from any source; and  
77 (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 in subsection (1) of this definition.

“Flood boundary and floodway map (FBFM)” means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

“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.

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

“Flood fringe” means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

“Flood hazard boundary map (FHBM)” means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

“Flood hazard map” means the document adopted by the Governing Body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

“Flood insurance rate map (FIRM)” means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

102 “Flood insurance study (FIS)” means an examination, evaluation and  
103 determination of flood hazards and, if appropriate, corresponding water surface  
104 elevations.

105 “Floodplain” or “flood-prone area” means any land area susceptible to being  
106 inundated by water from any source (see “Flooding”).

107 “Floodplain management” means the operation of an overall program of  
108 corrective and preventive measures for reducing flood damage, including but not limited  
109 to emergency preparedness plans, flood control works, and floodplain management  
110 regulations.

111 “Floodplain management regulations” means zoning ordinances, subdivision  
112 regulations, building codes, health regulations, special purpose ordinances (such as  
113 floodplain and grading ordinances) and other applications of police power. The term  
114 describes such State or local regulations, in any combination thereof, that provide  
115 standards for the purpose of flood damage prevention and reduction.

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

120 “Floodway” or “regulatory floodway” means the channel of a river or other  
121 watercourse and the adjacent land areas that must be reserved in order to discharge  
122 the base flood without cumulatively increasing the water surface elevation more than  
123 one foot.

124 “Floodway encroachment lines” means the lines marking the limits of floodways  
125 on Federal, State and local floodplain maps.

126 “Freeboard” means a factor of safety usually expressed in feet above a flood  
127 level for purposes of floodplain management. “Freeboard” tends to compensate for the  
128 many unknown factors that could contribute to flood heights greater than the height  
129 calculated for a selected size flood and floodway conditions, such as bridge openings  
130 and the hydrological effect of urbanization of the watershed.

131 “Functionally dependent use” means a use that cannot perform its intended  
132 purpose unless it is located or carried out in close proximity to water. This term includes  
133 only docking facilities and facilities that are necessary for the loading and unloading of  
134 cargo or passengers, but does not include long-term storage or related manufacturing  
135 facilities.

136 “Highest adjacent grade” means the highest natural elevation of the ground  
137 surface prior to construction next to the proposed walls of a structure.

138 “Historic structure” means any structure that is (a) listed individually in the  
139 National Register of Historic Places (a listing maintained by the Department of the  
140 Interior) or preliminarily determined by the Secretary of the Interior as meeting the  
141 requirements for individual listing on the National Register; (b) certified or preliminarily  
142 determined by the Secretary of the Interior as contributing to the historical significance  
143 of a registered historic district or a district preliminarily determined by the Secretary to  
144 qualify as a registered historic district; (c) individually listed on a state inventory of  
145 historic places in states with historic preservation programs which have been approved  
146 by the Secretary of the Interior; or (d) individually listed on a local inventory of historic  
147 places in communities with historic preservation programs that have been certified  
148 either (1) by an approved state program as determined by the Secretary of the Interior  
149 or (2) directly by the Secretary of the Interior in states without approved programs.

“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, 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” includes mobile homes manufactured prior to 1976 but 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 hazard boundary map (FHBM), flood insurance rate map (FIRM), or the flood boundary and floodway map (FBFM) for a community 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~~Geodetic~~American~~ Vertical Datum (NGVD) of ~~1929~~1988 or other datum, to which base flood elevations shown on a community’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 a community and includes any subsequent improvements to such structures.

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

“NFIP” means the National Flood Insurance Program (NFIP).

“Numbered A Zone” means a special flood hazard area where the Flood Insurance Rate Map shows the base flood elevation.

One percent annual chance flood. See “Base flood.”

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

“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” means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

“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.

“Risk premium rates” means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. “Risk premium rates” include provisions for operating costs and allowances.

Special Flood Hazard Area. See “Area of special flood hazard.”

“Special hazard area” means an area having special flood hazards and shown on an FHBM, FIRM or FBFM 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,

222 reconstruction, rehabilitation, addition placement, or other improvements ~~was~~were  
223 within 180 days of the permit date. The “actual start” means either the first placement of  
224 permanent construction of a structure on a site, such as the pouring of slabs or footings,  
225 the installation of piles, the construction of columns, any work beyond the stage of  
226 excavation, or the placement of a manufactured home on a foundation. Permanent  
227 construction does not include land preparation, such as clearing, grading and filling, the  
228 installation of streets and/or walkways, excavation for a basement, footings, piers,  
229 foundations, the erection of temporary forms, nor installation on the property of  
230 accessory structures, such as garages or sheds not occupied as dwelling units or not  
231 part of the main structure. For a substantial improvement, the “actual start of  
232 construction” means the first alteration of any wall, ceiling, floor, or other structural part  
233 of a building, whether or not that alteration affects the external dimensions of the  
234 building.

235 “State coordinating agency” means the Division of Water Resources, Kansas  
236 Department of Agriculture, or other office designated by the Governor of the State or by  
237 State statute at the request of the Administrator to assist in the implementation of the  
238 National Flood Insurance Program (NFIP) in the State.

239 “Structure” means, for floodplain management purposes, a walled and roofed  
240 building, including a gas or liquid storage tank, that is principally above ground, as well  
241 as a manufactured home. “Structure,” for insurance purposes, means a walled and  
242 roofed building, other than a gas or liquid storage tank that is principally above ground  
243 and affixed to a permanent site, as well as a manufactured home on a permanent  
244 foundation, ~~or a travel trailer without wheels on a permanent foundation~~. For the latter  
245 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.”

“Unnumbered A Zone” means a special flood hazard area shown on either a flood hazard boundary map or flood insurance rate map where the base flood elevation is not shown.

“Variance” means a grant of relief by the ~~community~~Board of Zoning Appeals from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other

development without the elevation certificate, other certifications, or other evidence of compliance required 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 American Vertical Datum (NGAVD) of 1929 ~~1988~~ (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Section 2. That section 17.30.020, Penalties for violation of chapter, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Violations; Penalties for violation of chapter.**

(a) The Floodplain Administrator may make reasonable entry upon any lands and waters in Topeka for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The Floodplain Administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner’s agent, lessee, or lessee’s agent whose lands will be entered. If none of these persons can be found, the Floodplain Administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.

(b) A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.

(c) The Floodplain Administrator shall provide written notice of a violation of this ordinance to the owner, the owner’s agent, lessee, or lessee’s agent by personal service or by certified mail, return receipt requested. The written notice shall include

instructions and a deadline to request a hearing before the Board of Zoning Appeals, and if no hearing is requested, a deadline by which the violation must be corrected.

(ad) Violation of the provisions of this chapter or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not to exceed \$499.00 and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(b) Nothing contained in this section shall prevent the City or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 3. That section 17.30.030, Statutory authorization, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Statutory authorization.**

The legislature of the State of Kansas has in K.S.A. 12-741 et seq., and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare of the public.

Section 4. That section 17.30.040, Findings of fact, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Findings of fact.**

(a) Flood Losses Resulting from Periodic Inundation. The special flood hazard areas of the City are subject to inundation which results in loss of life and property,

health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

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

(c) 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 consists of a series of interrelated steps:

(1) 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. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the current effective Federal Insurance Administrator's FIS, and illustrative materials documented in the interior drainage area maps of the Topeka levee certification package, and any future revisions thereto, and illustrative materials dated September 29, 2011, as amended and any future revisions thereto.

(2) Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and

overbank areas to convey the regulatory flood.

(3) Computation of a floodway required to convey this flood without increasing flood heights more than one foot at any point.

(4) Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.

(5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

Section 5. That section 17.30.070, Lands to which this chapter applies, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Lands to which this chapter applies.**

(a) This chapter shall apply to all lands within the jurisdiction of the City of Topeka, Kansas, identified as numbered and unnumbered A zones, AE, AO, and AH zones, on flood insurance rate map (FIRM) panels ~~released~~referenced on the associated FIRM Index dated September 29, 2011, as amended, and any future revisions thereto; and the designated AH zones illustrated as interior drainage area floodplains (or levee ponding areas) in the interior drainage area maps of the Topeka levee certification package or any other work map areas designated by the City of Topeka that can be considered best available data. This chapter shall also apply to all locations with a Letter of Map Revision – Fill (LOMR-F). In all areas covered by this chapter, no development shall be permitted except through the issuance of a floodplain development permit, granted by the ~~City Manager~~Floodplain Administrator or designee under such safeguards and restrictions as ~~are necessary~~may reasonably be imposed for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in ~~Article III of this chapter~~TMC 17.30.180.

~~(b) In addition, this chapter shall also apply to those lands which, based on the most accurate information available to the Development Services Director, fall within the ultimate 100-year floodplain.~~

Section 6. That section 17.30.090, Interpretation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Interpretation.**

In the interpretation and application, the provisions of this chapter shall be held to be minimum requirements to protect the health and safety of the public and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

Section 7. That section 17.30.150, Floodplain development permit, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Floodplain development permit.**

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes or mobile homes, in the areas described in TMC 17.30.070. 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.

Section 8. That section 17.30.170, Nonconforming uses, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Nonconforming uses.**

A structure, or the use of a structure or premises that was lawful before the passage or amendment of this 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 has been or is discontinued for 12 consecutive months, any future use of the building shall conform to this chapter.

(b) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 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.

Section 9. That section 17.30.180, General standards, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**General standards.**

(a) No permit for floodplain development shall be granted for new construction, substantial improvements, and other improvements, including the placement of manufactured or mobile homes, within any numbered or unnumbered A, AE, AO, and AH zones, unless the conditions of this ~~article~~section are satisfied.

(b) All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one percent annual chance or 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, the ~~f~~Floodplain ~~a~~Addministrator shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.

(c) Until a floodway is designated, no new construction, substantial improvements, or other development that exceeds 5,000 square feet of impervious

surface or is part of a larger common plan of development that exceeds 5,000 square feet of impervious surface, including fill, shall be permitted within any unnumbered or numbered A zones, ~~AH zones~~ or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community, will not exceed the lowest adjacent grade of the lowest impacted habitable structure, and will not exceed the current water surface elevation at the location of a habitable structure currently impacted by the floodplain.

(d) No new construction, substantial improvements or other development, including fill, shall be permitted within a designated zone AH floodplain or levee ponding area designated by the City of Topeka unless it is demonstrated that all fill in the zone AH/ponding area is offset by compensating cut to negate volume losses, with the compensatory storage being frequency/stage based for the two-year, 10-year, 25-year, 50-year, and 100-year events.

(e) No new construction, substantial improvements or other development that exceeds 5,000 square feet of impervious surface or is part of a larger common plan of development that exceeds 5,000 square feet of impervious surface, including fill, shall be permitted within a zone AE floodplain fringe zone on the FIRM, unless it is demonstrated that the water surface elevation will not exceed the lowest adjacent grade of the lowest impacted habitable structure, and will not exceed the current water surface elevation at the location of a habitable structure currently impacted by the floodplain.

(f) No new construction, substantial improvements or other development, including fill, resulting in alternations to a stream that has a drainage area greater than

640 acres (one square mile) shall be permitted without KDA-DWR approval for the stream change, unless the change is specifically exempt from the KDA-DWR regulations.

(g) All new construction, subdivision proposals, substantial improvements, prefabricated structures, placement of manufactured or mobile homes, and other developments shall require:

(1) 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;

(2) Construction with materials resistant to flood damage;

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

(4) 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;

(5) 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

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

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

flood damage;

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

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

(iv) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

(h) ~~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.~~ 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.

(i) Accessory Structures: Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; the accessory structure meets the following floodplain management requirements; and a floodplain development permit has been issued. Wet-floodproofing is only allowed for small low cost structures.

Any permit granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Permits shall meet

the following conditions.

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:

(1) Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).

(2) For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with TMC 17.30.180(g)(2).

(3) The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with TMC 17.30.180(g)(2). All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

(4) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with TMC 17.30.180(g)(2).

(5) The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to

the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with TMC 17.30.190(a)(3).

(6) The accessory structures must comply with the floodplain management floodway encroachment provisions of TMC 17.30.220(b) of this ordinance. No permits may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.

(7) Equipment, machinery, or other contents must be protected from any flood damage.

(8) No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.

(9) Wet-floodproofing construction techniques must be reviewed and approved by the Floodplain Administrator or designee. The Floodplain Administrator or designee may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification shall be paid by the developer.

(j) Hazardous Materials: All hazardous material storage and handling sites shall be located out of the special flood hazard area.

(k) Cumulative Improvement: A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done does not exceed fifty (50) percent of the structure's

current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with TMC 17.30.190 which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

Section 10. That section 17.30.190, Specific standards, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Specific standards.**

(a) In all areas identified as numbered and unnumbered A zones, AE zones, and AH zones, where base flood elevation data have been provided, as set forth in TMC 17.30.170(b), the following provisions are required:

(1) Residential Construction. New construction or substantial improvement of any residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. All mechanical and heating ventilation equipment to be elevated to same level of one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(2) Nonresidential Construction. New construction or substantial improvement of any commercial, industrial, or other nonresidential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be ~~dry~~-floodproofed ~~to a~~ minimum of so that below one (1) foot above 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. All mechanical and heating ventilation equipment to be elevated or protected to one (1) foot above the base flood elevation. A registered professional engineer or architect shall ~~certify~~verify 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 TMC 17.30.140(i). Mechanical and HVAC equipment will be elevated or protected to same levels of freeboard above the base flood elevation.

(3) Enclosures Below Lowest Floor. Require for all new construction and substantial improvements that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of 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:

(i) 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

(ii) The bottom of all openings 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



582 and exit of flood waters.

583 Section 11. That section 17.30.200, Manufactured homes, of The Code of the  
584 City of Topeka, Kansas, is hereby amended to read as follows:

585 **Manufactured or mobile homes.**

586 (a) All manufactured or mobile homes to be placed within all unnumbered and  
587 numbered A\_zones, AE\_zones, and AH zones on the community's FIRM shall be  
588 required to be installed using methods and practices that minimize flood damage. For  
589 the purposes of this requirement, manufactured or mobile homes must be elevated and  
590 anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may  
591 include, but are not limited to, use of over-the-top or frame ties to ground anchors. This  
592 requirement is in addition to applicable State and local anchoring requirements for  
593 resisting wind forces.

594 (b) ~~Require m~~Manufactured or mobile homes that are placed or substantially  
595 improved within unnumbered or numbered A\_zones, AE\_zones, and AH zones, on the  
596 community's FIRM shall be placed only on the following sites:

- 597 (1) Outside of a manufactured home park or subdivision;
- 598 (2) In a new manufactured home park or subdivision;
- 599 (3) In an expansion to an existing manufactured home park or  
600 subdivision; or
- 601 (4) In an existing manufactured home park or subdivision on which a  
602 manufactured or mobile home has incurred substantial damage as the result of a  
603 flood, be elevated on a permanent foundation such that the lowest floor of the  
604 manufactured home is elevated a minimum of one (1) foot above the base flood  
605 elevation and be securely attached to an adequately anchored foundation system

to resist flotation, collapse, and lateral movement. All mechanical and heating ventilation equipment to be elevated to same level of one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(c) ~~Require that m~~Manufactured or mobile homes ~~to be~~that are placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE zones and AH zones, on the community's FIRM, that are not subject to the provisions of subsection (b) of this section, shall be elevated so that either:

(1) ~~The~~the lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level; ~~or~~

(2) ~~The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.~~

The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Mechanical and HVAC equipment shall be elevated to the same level as the lowest floor.

Section 12. That section 17.30.210, Areas of shallow flooding (AO and AH zones), of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Areas of shallow flooding (AO and AH zones).**

Located within the areas of special flood hazard as described in TMC 17.30.070 are areas designated as AO and AH zones. ~~These areas have special flood hazards~~

~~associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:~~

(a) AO Zones. These 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.

(1) All new construction and substantial improvements of residential structures, including manufactured or mobile 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 community FIRM (at least two feet if no depth number is specified) plus one (1) foot of freeboard. Mechanical and HVAC equipment shall be protected to the same level as the lowest floor.

(2) All new construction and substantial improvements of any commercial, industrial, or other nonresidential structures, including manufactured or mobile 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 community FIRM (at least two feet if no depth number is specified) plus one (1) foot of freeboard or together with attendant utilities and sanitary facilities shall be completely floodproofed to that ~~level~~ 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. Mechanical and HVAC shall be flood protected or elevated to the same freeboard level.

(3) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

(b) *AH Zones.*

(1) The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in TMC 17.30.180 and 17.30.190.

(2) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

Section 13. That section 17.30.220, Floodway, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Floodway.**

Located within areas of special flood hazard established in TMC 17.30.070 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:

(a) 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 foot at any point.

(b) 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 community

during the occurrence of the base flood discharge. Documentation shall be provided to the City of Topeka for any permits required by the KDA-DWR and/or FEMA.

(c) The Floodplain Administrator or designee may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the Floodplain Administrator or designee first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.

(ed) If subsection (b) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of ~~this article~~ III.

(de) 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 TMC 17.30.180(b).

Section 14. That section 17.30.250, Floodplain management variance criteria, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Floodplain management variance criteria.**

In ~~reviewing~~ passing upon such applications for variances, the Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this chapter, and the following criteria:

(a) Danger to life and property due to flood damage;

(b) Danger that materials may be swept onto other lands to the injury of others;

(c) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) Importance of the services provided by the proposed facility to the

community;

(e) Necessity to the facility of a waterfront location, where applicable;

(f) Availability of alternative locations, not subject to flood damage, for the proposed use;

(g) Compatibility of the proposed use with existing and anticipated development;

(h) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) Safety of access to the property in times of flood for ordinary and emergency vehicles;

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

(k) 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.

Section 15. That section 17.30.260, Conditions for approving variances, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Conditions for approving variances.**

(a) 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 subsections (b) through (f) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(b) Variances may be issued for the reconstruction, repair, ~~rehabilitation,~~ or

restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provided the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

(c) Variances shall not be issued within any designated floodway if any significant increase in flood discharge or base flood elevation would result.

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

(e) Variances shall only be issued upon: (1) showing of good and sufficient cause, (2) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) 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.

(f) ~~The Development Services Director~~ Floodplain Administrator or designee shall notify the applicant that: (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this chapter.

(g) The Floodplain Administrator or designee shall maintain a record of all variance actions, including justification for their issuance.

(h) Variances may be issued by the Board of Zoning Appeals for new

749 construction and substantial improvements and for other development necessary for the  
750 conduct of a functionally dependent use provided that the criteria of items (a) through  
751 (e) of this section are met, and the structure or other development is protected by  
752 methods that minimize flood damages during the base flood and create no additional  
753 threats to public safety.

754 (i) A community shall maintain a record of all variance actions, including  
755 justification for their issuance.

756 Section 16. That original §§ 17.30.010 through 17.30.040, 17.30.070,  
757 17.30.090, 17.30.150, 17.30.170 through 17.30.220, 17.30.250 and 17.30.260 of The  
758 Code of the City of Topeka, Kansas, are hereby specifically repealed.

759 Section 17. This ordinance shall take effect and be in force from and after its  
760 passage, approval and publication in the official City newspaper.

761 Section 18. This ordinance shall supersede all ordinances, resolutions or rules,  
762 or portions thereof, which are in conflict with the provisions of this ordinance.

763 Section 19. Should any section, clause or phrase of this ordinance be declared  
764 invalid by a court of competent jurisdiction, the same shall not affect the validity of this  
765 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

766 PASSED AND APPROVED by the Governing Body on June 20, 2023.

767 CITY OF TOPEKA, KANSAS

768  
769  
770  
771 \_\_\_\_\_  
Michael A. Padilla, Mayor

772 ATTEST:

773  
774 \_\_\_\_\_  
775 Brenda Younger, City Clerk

776  
777 *Note: The initial approval of this ordinance on May 9, 2023 was invalid. A public hearing*  
778 *was not conducted as required by law.*