

(Published in the Topeka Metro News August 29, 2011)

ORDINANCE NO. 19627

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., repealing City of Topeka Code Chapter 17.15 and creating Chapter 17.30 concerning Floodplain Management.

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

Section 1. That Chapter 17.15, FLOOD DAMAGE PREVENTION, § 17.15.010 through § 17.15.230, of The Code of the City of Topeka, Kansas, is hereby repealed in its entirety.

Section 2. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.010, which said section reads 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 ordinance 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 ordinance or a request for a variance.

"Appurtenant 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.

"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 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.

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

"Building" see "structure."

"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 charged 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.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems,

53 mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of
54 equipment or materials.

55 "Elevated Building" means for insurance purposes, a non-basement building
56 which has its lowest elevated floor raised above ground level by foundation walls, shear
57 walls, posts, piers, pilings, or columns.

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

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

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

71 "Expansion to an Existing Manufactured Home Park or Subdivision" means the
72 preparation of additional sites by the construction of facilities for servicing the lots on
73 which the manufactured homes are to be affixed (including the installation of utilities, the
74 construction of streets, and either final site grading or the pouring of concrete pads).

75 "Flood" or "Flooding" means a general and temporary condition of partial or
76 complete inundation of normally dry land areas from: (1) the overflow of inland waters;

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

84 "Flood Boundary and Floodway Map (FBFM)" means an official map of a
85 community on which the Administrator has delineated both special flood hazard areas
86 and the designated regulatory floodway.

87 "Flood Elevation Determination" means a determination by the Administrator of
88 the water surface elevations of the base flood, that is, the flood level that has a one
89 percent or greater chance of occurrence in any given year.

90 "Flood Elevation Study" means an examination, evaluation and determination of
91 flood hazards and if appropriate, corresponding water surface elevations.

92 "Flood Fringe" means the area outside the floodway encroachment lines, but still
93 subject to inundation by the regulatory flood.

94 "Flood Hazard Boundary Map (FHBM)" means an official map of a community,
95 issued by the Administrator, where the boundaries of the flood areas having special
96 flood hazards have been designated as (unnumbered or numbered) A zones.

97 "Flood Hazard Map" means the document adopted by the governing body
98 showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream
99 channel; and (5) other geographic features.

100 "Flood Insurance Rate Map (FIRM)" means an official map of a community, on

101 which the Administrator has delineated both the special flood hazard areas and the risk
102 premium zones applicable to the community.

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

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

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

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

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

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

125 "Floodway Encroachment Lines" means the lines marking the limits of floodways
126 on Federal, State and local floodplain maps.

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

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

137 "Highest Adjacent Grade" means the highest natural elevation of the ground
138 surface prior to construction next to the proposed walls of a structure.

139 "Historic Structure" means any structure that is (a) listed individually in the
140 National Register of Historic Places (a listing maintained by the Department of Interior)
141 or preliminarily determined by the Secretary of the Interior as meeting the requirements
142 for individual listing on the National Register; (b) certified or preliminarily determined by
143 the Secretary of the Interior as contributing to the historical significance of a registered
144 historic district or a district preliminarily determined by the Secretary to qualify as a
145 registered historic district; (c) individually listed on a state inventory of historic places in
146 states with historic preservation programs which have been approved by the Secretary
147 of the Interior; or (d) individually listed on a local inventory of historic places in
148 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.

"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 ordinance.

"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" 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 Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" 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).

"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

197 value of the structure, less land value, is above ground.

198 "Reasonably Safe From Flooding" means base flood waters will not inundate the
199 land or damage structures to be removed from the SFHA and that any subsurface
200 waters related to the base flood will not damage existing or proposed buildings.

201 "Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b)
202 400 square feet or less when measured at the largest horizontal projections; (c)
203 designed to be self-propelled or permanently able to be towed by a light-duty truck; and
204 (d) designed primarily not for use as a permanent dwelling but as temporary living
205 quarters for recreational, camping, travel, or seasonal use.

206 "Remedy A Violation" means to bring the structure or other development into
207 compliance with Federal, State, or local floodplain management regulations; or, if this is
208 not possible, to reduce the impacts of its noncompliance.

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

214 "Special Flood Hazard Area" see "area of special flood hazard."

215 "Special Hazard Area" means an area having special flood hazards and shown
216 on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

217 "Start of Construction" includes substantial-improvements, and means the date
218 the building permit was issued, provided the actual start of construction, repair,
219 reconstruction, rehabilitation, addition placement, or other improvements were within
220 180 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

245 enclosed building on the premises.

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

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

259 "Variance" means a grant of relief by the community from the terms of a
260 floodplain management regulation. Flood insurance requirements remain in place for
261 any varied use or structure and cannot be varied by the community.

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

267 "Water Surface Elevation" means the height, in relation to the National Geodetic
268 Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various

269 magnitudes and frequencies in the floodplain riverine areas.

270 Section 3. That The Code of the City of Topeka, Kansas, is hereby amended
271 by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to
272 be numbered 17.30.020, which said section reads as follows:

273 **Penalties for violation of chapter.**

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

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

284 Section 4. That The Code of the City of Topeka, Kansas, is hereby amended
285 by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to
286 be numbered 17.30.030, which said section reads as follows:

287 **Statutory authorization.**

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

293 Section 5. That The Code of the City of Topeka, Kansas, is hereby amended
294 by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to
295 be numbered 17.30.040, which said section reads as follows:

296 **Findings of fact.**

297 (a) Flood Losses Resulting from Periodic Inundation. The special flood hazard
298 areas of the city are subject to inundation which results in loss of life and property,
299 health and safety hazards, disruption of commerce and governmental services,
300 extraordinary public expenditures for flood protection and relief, and impairment of the
301 tax base; all of which adversely affect the public health, safety and general welfare.

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

307 (c) Methods Used To Analyze Flood Hazards. The Flood Insurance Study
308 (FIS) that is the basis of this chapter uses a standard engineering method of analyzing
309 flood hazards, which consist of a series of interrelated steps.

310 (1) Selection of a base flood that is based upon engineering
311 calculations, which permit a consideration of such flood factors as its expected
312 frequency of occurrence, the area inundated, and the depth of inundation. The
313 base flood selected for this ordinance is representative of large floods, which are
314 characteristic of what can be expected to occur on the particular streams subject
315 to this chapter. The base flood is the flood that is estimated to have a one
316 percent chance of being equaled or exceeded in any one year as delineated on

the Federal Insurance Administrator's FIS, 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 (1) 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 6. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.050, which said section reads as follows:

Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare; to minimize those losses described in subsection 17.30.040; to establish or maintain the City of Topeka's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this chapter to:

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

(b) Require uses vulnerable to floods, including public facilities that serve

such uses, be provided with flood protection at the time of initial construction; and

(c) Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

Section 7. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.060, which said section reads as follows:

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.

Section 8. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.070, which said section reads as follows:

Lands to which this chapter applies.

(a) This chapter shall apply to all lands within the jurisdiction of the city identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated September 29, 2011 of the Flood Insurance Rate Map (FIRM) as amended and any future revisions thereto and the Flood Insurance Study (FIS). In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the city council or its duly designated representative under such safeguards and restrictions as the city council or its designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article III.

(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 9. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.080, which said section reads as follows:

Abrogation.

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.

Section 10. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.090, which said section reads as follows:

Interpretation.

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

Section 11. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.100, which said section reads as follows:

Warning; 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 the city or any officer or employee thereof, for any flood damages that may result from reliance on this chapter or any administrative decision lawfully made there under.

Section 12. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.110, which said section reads as follows:

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 13. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article I, Generally, to be numbered 17.30.120, which said section reads as follows:

Amendments.

The regulations, restrictions, and boundaries set forth in this chapter may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time

413 and place of such hearing shall be published in a newspaper of general circulation in
414 the city. At least twenty (20) days shall elapse between the date of this publication and
415 the public hearing. A copy of such amendments will be provided to the FEMA Region
416 VII office. The regulations of this chapter are in compliance with the NFIP regulations.

417 Section 14. That The Code of the City of Topeka, Kansas, is hereby amended
418 by adding a section in Chapter 17.30, Floodplain Management, Article II, Administration,
419 to be numbered 17.30.130, which said section reads as follows:

420 **Designation of floodplain administrator.**

421 The development services director is hereby appointed to administer and
422 implement this chapter as the floodplain administrator.

423 Section 15. That The Code of the City of Topeka, Kansas, is hereby amended
424 by adding a section in Chapter 17.30, Floodplain Management, Article II, Administration,
425 to be numbered 17.30.140, which said section reads as follows:

426 **Floodplain administrator; duties.** The duties of the floodplain administrator
427 shall include, but not be limited to:

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

431 (b) Review of all applications for floodplain development permits for proposed
432 development to assure that all necessary permits have been obtained from Federal,
433 State, or local governmental agencies from which prior approval is required by Federal,
434 State, or local law;

435 (c) Review all subdivision proposals and other proposed new development,
436 including manufactured home parks or subdivisions, to determine whether such

proposals will be reasonably safe from flooding;

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

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

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

(g) 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;

(h) 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;

(i) When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

Section 16. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article II, Administration, to be numbered 17.30.150, which said section reads 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, in the areas described in section 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 17. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article II, Administration, to be numbered 17.30.160, which said section reads as follows:

Application.

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:

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

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

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

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

(e) Specify whether development is located in designated flood fringe or floodway;

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

(g) Give such other information as reasonably may be required by the floodplain administrator;

- 485 (h) Be accompanied by plans and specifications for proposed construction;
486 and
487 (i) Be signed by the permittee or his authorized agent who may be required
488 to submit evidence to indicate such authority.

489 Section 18. That The Code of the City of Topeka, Kansas, is hereby amended
490 by adding a section in Chapter 17.30, Floodplain Management, Article II, Administration,
491 to be numbered 17.30.170, which said section reads as follows:

492 **Nonconforming uses.**

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

496 (a) If such structure, use, or utility service is discontinued for twelve (12)
497 consecutive months, any future use of the building shall conform to this chapter.

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

505 Section 19. That The Code of the City of Topeka, Kansas, is hereby amended
506 by adding a section in Chapter 17.30, Floodplain Management, Article III, Flood Hazard
507 Reduction, to be numbered 17.30.180, which said section reads as follows:
508

General standards.

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

(b) 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, the floodplain administrator 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, including fill, shall be permitted within any unnumbered or numbered A 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.

(d) All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured 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 five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

(e) 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.

Section 20. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article III, Flood Hazard Reduction, to be numbered 17.30.190, which said section reads as follows:

Specific standards.

(a) In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in section 17.30.170(b), 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 one (1) foot above base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(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 one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be dry flood proofed to a minimum of one (1) foot above the base flood elevation. 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 17.30.130(g)(h)(i).

(3) 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:

(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.

Section 21. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article III, Flood Hazard Reduction, to be numbered 17.30.200, which said section reads as follows:

Manufactured homes.

(a) All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community'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 local anchoring requirements for resisting wind forces.

(b) Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:

(1) Outside of a manufactured home park or subdivision;

(2) In a new manufactured home park or subdivision;

(3) In an expansion to and existing manufactured home park or subdivision; or

(4) 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 one (1) foot 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.

(c) Require that manufactured 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, on the community's FIRM, that are not subject to the provisions of section 17.30.190(b), be elevated so that either:

(1) The lowest floor of the manufactured 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 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 elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

Section 22. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article III, Flood Hazard Reduction, to be numbered 17.30.210, which said section reads as follows:

Areas of shallow flooding (AO and AH zones).

Located within the areas of special flood hazard as described in section 17.30.070 are areas designated as 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. The following provisions apply:

(a) AO Zones

(1) 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).

(2) 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's 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 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.

(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 section 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 23. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article III, Flood Hazard Reduction, to be numbered 17.30.220, which said section reads as follows:

Floodway.

Located within areas of special flood hazard established in section 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:

677 (a) The city shall select and adopt a regulatory floodway based on the
678 principle that the area chosen for the regulatory floodway must be designed to carry the
679 waters of the base flood without increasing the water surface elevation of that flood
680 more than one (1) foot at any point.

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

687 (c) If 17.30.220(b) is satisfied, all new construction and substantial-
688 improvements shall comply with all applicable flood hazard reduction provisions of
689 Article III.

690 (d) In unnumbered A zones, the city shall obtain, review, and reasonably
691 utilize any base flood elevation or floodway data currently available from Federal, State,
692 or other sources as set forth in section 17.30.180(b).

693 Section 24. That The Code of the City of Topeka, Kansas, is hereby amended
694 by adding a section in Chapter 17.30, Floodplain Management, Article III, Flood Hazard
695 Reduction, to be numbered 17.30.230, which said section reads as follows:

696 **Recreational vehicles.**

697 (a) Recreational vehicles placed on sites within all unnumbered and
698 numbered A Zones, AE, AH, and AO Zones on the community's FIRM shall either:

699 (1) Be on the site for fewer than 180 consecutive days,

700 (2) Be fully licensed and ready for highway use; or

(3) Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

(b) 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 25. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article IV, Floodplain Management Variance Procedures, to be numbered 17.30.240, which said section reads as follows:

Establishment of appeal board.

(a) The Board of Zoning Appeals (Board) shall hear and decide appeals and requests for variances from the floodplain management requirements of this chapter.

(b) 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.

(c) The Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.

(d) Any person aggrieved by the decision of the Board may appeal such decision to the district court as provided in K.S.A. 12-759 and 12-760.

Section 26. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section in Chapter 17.30, Floodplain Management, Article IV, Floodplain Management Variance Procedures, to be numbered 17.30.250, which said section reads as follows:

Floodplain management variance criteria.

In reviewing applications for variances, the Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, 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

749 sewer, gas, electrical, and water systems; streets; and bridges.

750 Section 27. That The Code of the City of Topeka, Kansas, is hereby amended
751 by adding a section in Chapter 17.30, Floodplain Management, Article IV, Floodplain
752 Management Variance Procedures, to be numbered 17.30.260, which said section
753 reads as follows:

754 **Conditions for approving variances.**

755 (a) Generally, variances may be issued for new construction and substantial-
756 improvements to be erected on a lot of one-half acre or less in size contiguous to and
757 surrounded by lots with existing structures constructed below the base flood elevation,
758 providing subsections (b) through (f) have been fully considered. As the lot size
759 increases beyond the one-half acre, the technical justification required for issuing the
760 variance increases.

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

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

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

771 (e) Variances shall only be issued upon: (a) showing of good and sufficient
772 cause, (b) determination that failure to grant the variance would result in exceptional

773 hardship to the applicant, and (c) determination that the granting of a variance will not
774 result in increased flood heights, additional threats to public safety, extraordinary public
775 expense, create nuisances, cause fraud on or victimization of the public, or conflict with
776 existing local laws or ordinances.

777 (f) The development services director shall notify the applicant that: (a) the
778 issuance of a variance to construct a structure below base flood level will result in
779 increased premium rates for flood insurance up to amounts as high as \$25.00 for
780 \$100.00 of insurance coverage and (b) such construction below the base flood level
781 increases risks to life and property. Such notification shall be maintained with the
782 record of all variance actions as required by this chapter.

783 Section 28. This ordinance shall take effect and be in force from and after its
784 passage, approval and publication in the official City newspaper.

785 Section 29. This ordinance shall supersede all ordinances, resolutions or rules,
786 or portions thereof, which are in conflict with the provisions of this ordinance.

787 Section 30. Should any section, clause or phrase of this ordinance be declared
788 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
789 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

790 PASSED AND APPROVED by the City Council on August 23, 2011.

791 CITY OF TOPEKA, KANSAS

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796 _____
William W. Bunten, Mayor

797 ATTEST:

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800 _____
801 Brenda Younger, City Clerk