

Neighborhood Services

City of Richland Hills, Texas

# Memorandum

To: Honorable Mayor Edward Lopez and members of the Richland Hills City Council

From: Scott Mitchell, Director of Neighborhood Services

Date: March 25, 2019

Subject: Consider approval of revisions to Chapter 42, Article II, Flood Damage Prevention in the City's Code of Ordinances

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## **Council Action Requested:**

Consider approval of revisions to Chapter 42, Article II, Flood Damage Prevention in the City's Code of Ordinances

## **Background Information:**

Periodically the Federal Emergency Management Agency (FEMA) issues updates to the maps and requirements of the Federal Floodplain Management Regulations. Our Floodplain and Storm Water Manager, Angela Davidson, P/E. with Halff Associates reviewed the updates and submitted recommended revisions to Chapter 42, Article II - Flood Damage Prevention to maintain compliance with the updated FEMA regulations. The amended ordinance is attached for review and approval.

## **Financial Impact:**

N/A

## **Board/Citizen Input:**

N/A

## **Attachments:**

Amended Ordinance: Chapter 42, Article II – Flood Damage Prevention

## **Staff Contact:**

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**CITY OF RICHLAND HILLS ORDINANCE NO. 1386-19**

**AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS AMENDING ARTICLE II OF CHAPTER 42 OF THE CITY CODE ADOPTING FLOOD DAMAGE PREVENTION AND CONTROL REGULATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Richland Hills is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the flood hazard areas of Richland Hills are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

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

WHEREAS, the Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses; and

WHEREAS, the Federal Emergency Management Agency requires the City to adopt the following regulations in order to further the goals of flood prevention and flood damage control; and

WHEREAS, the City commits to recognize and duly evaluate flood hazards in all official actions in the areas having special flood hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

WHEREAS, the City commits to assist FEMA in the delineation of the limits of the areas having special flood hazards; and

WHEREAS, the City commits to provide information concerning present uses and occupancy of the floodplain areas of FEMA map request; and

WHEREAS, the City commits to maintain for public inspection and furnish upon request, any certificates of floodproofing and information on the elevation of the lowest floor (including

basement) of all new or substantially improved structures, and include whether or not such structures contain a basement and the elevation to which the structure was floodproofed; and

WHEREAS, the City commits to cooperate with federal, state and local agencies and private firms which undertake to study, survey, map and identify floodplain hazards, and cooperate with neighboring communities with respect to the management of adjoining floodplains areas in order to prevent aggravation of existing hazards; and

WHEREAS, the City commits to notify FEMA in writing, upon occurrence, whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area; and include with such notification a copy of a map of the area of the community suitable for reproduction clearly delineating the new corporate limits of the new area for which the community has assumed or relinquished floodplain management regulatory authority.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS:

**SECTION 1.  
ADOPTION OF REVISED ARTICLE II OF CHAPTER 42**

Article II of Chapter 42 of the Richland Hills City Code is hereby amended to provide as follows:

**ARTICLE II. Flood Damage Prevention**

**Division 1. Generally**

**SECTION 42-31. DEFINITIONS**

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

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

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

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

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

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

**AREA OF SPECIAL FLOOD HAZARD** - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

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

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

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

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

**CRITICAL FEATURE** - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT** - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**ELEVATED BUILDING** – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

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

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD OR FLOODING** - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters.
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

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

**FLOOD INSURANCE RATE MAP (FIRM)** - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** – see *Flood Elevation Study*

**FLOODPLAIN OR FLOOD-PRONE AREA** - means any land area susceptible to being inundated by water from any source (see definition of flooding).

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

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

**FLOOD PROTECTION SYSTEM** - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

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

**FLOODWAY** – see *Regulatory Floodway*

**FUNCTIONALLY DEPENDENT USE** - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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

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

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior; or
  - (b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE** - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM** - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME** - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

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

**RECREATIONAL VEHICLE** - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

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

**SPECIAL FLOOD HAZARD AREA** – see *Area of Special Flood Hazard*

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

**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.

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

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



**VARIANCE** – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION** - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

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

#### **SECTION 42-32. STATUTORY AUTHORIZATION**

The statutory authorization for this ordinance is found in the City's powers as a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code, and in the Flood Control Insurance Act, Texas Water Code, Section 16.315.

#### **SECTION 42-33. FINDINGS OF FACT**

- (1) The flood hazard areas of Richland Hills are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

#### **SECTION 42-34. STATEMENT OF PURPOSE**

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

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

**SECTION 42-35. METHODS OF REDUCING FLOOD LOSSES**

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

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

**SECTION 42-36. LANDS TO WHICH THIS ORDINANCE APPLIES**

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of Richland Hills.

**SECTION 42-37. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Tarrant County, Texas And Incorporated Areas," dated March 21, 2019, with accompanying Flood Insurance Rate Maps dated March 21, 2019, and any revisions or replacements approved by FEMA in the future thereto are hereby adopted by reference and declared to be a part of this ordinance.

**SECTION 42-38. COMPLIANCE**

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

**SECTION 42-39. ABROGATION AND GREATER RESTRICTIONS**

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

**SECTION 42-40. INTERPRETATION**

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

**SECTION 42-41. WARNING AND DISCLAIMER OR LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

*[Sections 42-42 through 42-60 reserved for expansion]*

**Division 2. Administration**

**SECTION 42-61. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

The City Manager or designee is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

**SECTION 42-62. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

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

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this ordinance.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
- (6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data has not been provided in accordance with Division 1, Section 42-37, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Division 3.
- (9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation

of the base flood by more than 1 foot, provided that the community **first** completes all of the provisions required by Section 65.12.

**SECTION 42-63. ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

**SECTION 42-64. PERMIT PROCEDURES**

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

- (a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
- (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
- (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Division 3, Section 42-87;
- (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
- (e) Maintain a record of all such information in accordance with Division 2, Section 42-62(1);

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

- (a) The danger to life and property due to flooding or erosion damage;
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (c) The danger that materials may be swept onto other lands to the injury of others;

- (d) The compatibility of the proposed use with existing and anticipated development;
- (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

**SECTION 42-65. VARIANCE PROCEDURES**

- (1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
- (2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- (3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
- (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Division 2, Section 42-64(2) of this Article have been fully considered. As the lot size

increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance Division 1, Section 42-34.

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

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

(10) Prerequisites for granting variances:

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

(b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Division 2, Section 42-65 (1) – (9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

*[Sections 42-66 through 42-85 reserved for expansion.]*

### **Division 3. Standards**

#### **SECTION 42-86. GENERAL STANDARDS FOR FLOOD HAZARD REDUCTION**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### **SECTION 42-87. SPECIFIC STANDARDS FOR FLOOD HAZARD REDUCTION.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Division 1, Section 42-37, (ii) Division 2, Section 42-62(8), or (iii) Division 3, Section 42-88(3), the following provisions are required:

- (1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to one foot (1') above the base flood elevation, provided, however, that the City and the Floodplain Administrator shall encourage the property owner to design and construct any new construction and substantial improvement of any residential structure to have the lowest floor (including basement), elevated to two feet (2') above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to



the Floodplain Administrator that the standard of this subsection as proposed in Division 2, Section 42-64(1(c)), is satisfied.

(2) **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot (1') above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level 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, provided, however, that the City and the Floodplain Administrator shall encourage the property owner to design and construct any new construction and substantial improvement of any residential structure to have the lowest floor (including basement), elevated to two feet (2') above the base flood elevation. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. 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 openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all openings shall be no higher than 1 foot above grade.
- (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) **Manufactured Homes** -

- (a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which 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 that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot (1') above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, provided, however, that the City and the Floodplain Administrator shall encourage the property owner to design and construct any new construction and substantial improvement of any residential structure to have the lowest floor (including basement), elevated to two feet (2') above the base flood elevation.
- (c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
  - (i) the lowest floor of the manufactured home is at one foot (1') above the base flood elevation, provided, however, that the City and the Floodplain Administrator shall encourage the property owner to design and construct any new construction and substantial improvement of any residential structure to have the lowest floor (including basement), elevated to two feet (2') above the base flood elevation, or
  - (ii) 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 anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Division 2, Section 42-64(1) , and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. 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 42-88. STANDARDS FOR SUBDIVISION PROPOSALS**

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Division 1, Section 42-33, 34, and 35 of this ordinance.
- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Division 2, Section 42-63; Divisions 2, Section 42-64; and the provisions of Division 3 of this ordinance.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Division 1, Section 42-37; Division 2, Section 42-62(8) of this ordinance.
- (4) Base flood elevation data shall be generated by a detailed engineering study for all Zone A areas, within 100 feet of the contour lines of Zone A areas, and other streams not mapped by FEMA, as indicated on the community's FIRM.
- (5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (6) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

**SECTION 42-89. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)**

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated to one foot (1') above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least one foot (1') if no depth number is specified), provided, however, that the City and the Floodplain Administrator shall encourage the property owner to design and construct any new construction and substantial improvement of any residential structure to have the lowest floor (including basement), elevated to two feet (2') above the base flood elevation.

- (2) All new construction and substantial improvements of non-residential structures;
  - (a) have the lowest floor (including basement) elevated to one foot (1') above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least one foot (1') if no depth number is specified) , provided, however, that the City and the Floodplain Administrator shall encourage the property owner to design and construct any new construction and substantial improvement of any residential structure to have the lowest floor (including basement), elevated to two feet (2') above the base flood elevation, or
  - (b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level 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 of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Division 2, Section 42-64 are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.
- (5) Where BFE data are utilized in Zone A, obtain and maintain records of the lowest floor and floodproofing elevations for new and substantially improved construction.
- (6) In riverine areas, notify adjacent communities of watercourse alterations and relocations.
- (7) Until a regulatory floodway is designated, no encroachment may increase the Base Flood level more than 1 foot.
- (8) In Zones AO and AH, require drainage paths around structures on slopes to guide water away from structures.

#### **SECTION 42-90. FLOODWAYS**

Floodways - located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, 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.

(2) If Division 3, Section 42-90(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Division 3.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

## **SECTION 2. SEVERABILITY**

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

## **SECTION 3. PENALTY FOR NONCOMPLIANCE**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this court order and other applicable regulations. Violation of the provisions of this court order by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this court order or fails to comply with any of its requirements shall upon conviction thereof be fined not more than two thousand dollars and no cents (\$2,000.00) for each violation, and in addition shall pay all costs and expenses involved in the case. Each day a violation occurs is a separate offense. Nothing herein contained shall prevent Richland Hills from taking such other lawful action as is necessary to prevent or remedy any violation.

## **SECTION 4. PROVISIONS CUMULATIVE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Richland Hills, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 5.  
PROVISIONS SEVERABLE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 6.  
RIGHTS AND REMEDIES SAVED**

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of the City Code amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7.  
PUBLICATION**

The City Secretary of the City of Richland Hills is directed to publish the caption, penalty clause, publication clause and effective date of this Ordinance to the extent required by law.

**SECTION 8.  
PUBLICATION IN BOOK OR PAMPHLET FORM**

The City Secretary of the City of Richland Hills is hereby authorized to publish this ordinance and the exhibits to this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance and the exhibits to this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

**SECTION 9.  
PENALTY FOR VIOLATION**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined no more than Two Thousand Dollars and no cents (\$2,000.00) for each violation of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 10.  
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 25<sup>TH</sup> DAY OF MARCH, 2019.

\_\_\_\_\_  
THE HONORABLE EDWARD LOPEZ, MAYOR

ATTEST:

\_\_\_\_\_  
CATHY BOURG, CITY SECRETARY

EFFECTIVE DATE: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
BETSY ELAM, CITY ATTORNEY