

Ordinances Governing  
**FLOOD DAMAGE PREVENTION**  
in the  
CITY OF ARLINGTON  
TEXAS

Amended by Ordinance No. 10-011  
(January 12, 2010)

(Chapter Designator: FLOOD DAMAGE PREVENTION)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
93-04	01/19/93	Amend <b>Article I, Section 1.01, Title, Subsection 1.04, Areas of Special Flood Hazard</b> , to adopt new Federal Emergency Management Agency flood insurance rate maps.
94-21	02/1/94	Amend <b>Article IV</b> , by the addition of <b>Section 4.11, Trinity River Corridor Development Certificate Process</b> , requiring a corridor development certificate for flood plain alterations within the Trinity River corridor.
<a href="#">00-106</a>	09/12/00	Amend Chapter relative to referencing the Federal Emergency Management Agency's new Flood Insurance Rate Map for Tarrant County, Texas, and incorporated areas; compliance with federal requirements regarding elevation certificates; minimum building elevation; and the revision of the requirements for appeal and variance requests.
<a href="#">09-049</a>	09/01/09	Amend Chapter through the repeal of the existing chapter and the adoption of a new "Flood Damage Prevention" Chapter related to minimizing public and private losses due to flood conditions.
<a href="#">10-011</a>	01/12/10	Amend <b>Article IV, Administration, Section 4.03, Permit Procedures</b> , by the addition of <b>Subsection (8)</b> , relative to a requirement that final plans or other documents that will be archived must be submitted in electronic format; amend <b>Article V, Provisions for Flood Hazard Reduction, Section 5.06, Penalties for Non Compliance</b> , relative to updated penalty provisions.

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**ARTICLE I**

**STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND  
METHODS**

**Section 1.01 Statutory Authorization**

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.

**Section 1.02 Findings of Fact**

- (1) The flood hazard areas of Arlington 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 1.03 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;

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- (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 1.04    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.
- (6) The regulatory flood elevation shall be determined by a licensed professional engineer through hydrologic and hydraulic studies of the waterway adjacent to the development and contributing areas without:
  - (a) Raising the water surface elevation more than one foot (cumulative for entire watershed) above the regulatory flood, if there is not an established floodway.

- (b) Raising the water surface elevation more than zero (0.00) feet above the regulatory flood, if there is an established floodway.
  - (c) Flooding buildings upstream or downstream of the proposed development.
- (7) When development is proposed in areas that do not indicate an established floodway (Zone A), a licensed professional engineer shall define the regulatory floodway through hydrologic and hydraulic analyses.

(Adopt Ord 09-049, 9/1/09)

**ARTICLE II**

**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.

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**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.

**CITY or COMMUNITY** - means the City of Arlington, Texas unless the context clearly indicates otherwise.

**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 initial FIRM (March 5, 1976). "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 DEVELOPMENT PERMIT** - means an authorization issued by the City for any work to be performed within areas of the floodplain.

**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,

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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*

**FULLY URBANIZED** - means that the watershed is completely developed in accordance with the current land use plan adopted by the City. For the portions of the upstream watershed outside the City, reasonable assumptions relating to urbanization shall be made by the Floodplain Administrator. Other terms that may be used that have the same meaning are fully developed, built-out and ultimate conditions.

**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 and finished garage). 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

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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.

**NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS** - means the regulations set forth for the National Flood Insurance Program in Title 44 of the Code of Federal Regulations.

**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, March 5, 1976, 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.

**PERSON** - means any individual or group of individuals, firm, partnership, association, corporation, or any other entity including State and local governments and agencies.

**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.

**SECTION** - means a section of this flood damage prevention chapter unless the context clearly indicates otherwise.

**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

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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 25 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 25 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 the City Council 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) of the National Flood Insurance Program Regulations 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.

(Adopt Ord 09-049, 9/1/09)

**ARTICLE III**

**GENERAL PROVISIONS**

**Section 3.01 Lands to Which This Ordinance Applies**

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Arlington.

**Section 3.02 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 and Incorporated Areas," dated September 25, 2009, with accompanying Flood Insurance Rate Maps (FIRM) dated September 25, 2009 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

**Section 3.03 Establishment of Development Permit**

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

**Section 3.04 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 3.05 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 3.06 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 3.07 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.

(Adopt Ord 09-049, 9/1/09)

**ARTICLE IV**

**ADMINISTRATION**

**Section 4.01 Designation of the Floodplain Administrator**

The Director of Public Works and Transportation 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 4.02 Duties and Responsibilities of the Floodplain Administrator**

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

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this 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 Section 3.02, 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 Article 5 of this ordinance.
- (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 of the National Flood Insurance Program Regulations.

**Section 4.03 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) After forms are set for the lowest floor, a letter completed by a licensed engineer or surveyor indicating the proposed lowest floor elevation (in relation to mean sea level), including basement and finished garage of all new and substantially improved structures;
  - (b) After construction and before final inspection, an elevation certificate completed by a licensed engineer or surveyor;
  - (c) Elevation in relation to mean sea level to which any nonresidential structure shall be flood-proofed;
  - (d) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the flood-proofing criteria of Section 5.02 (2);
  - (e) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
  - (f) Maintain a record of all such information in accordance with Section 4.02(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;

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- (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.
- (3) No person shall proceed with development of property within the floodplain until an application is submitted and a Floodplain Development Permit issued.
- (4) No application shall be reviewed which is not complete and accompanied by payment of the Floodplain Development Permit fees as established by resolution of the City Council. No part of the fees shall be refundable unless the application is withdrawn by the applicant prior to the City's review of the application, in which case, the City shall refund the fee to the applicant.
- (5) The Floodplain Development Permit shall automatically expire after the expiration of two (2) years from the date of the permit unless development has commenced.
- (6) Prior to issuance of the Floodplain Development Permit, or authorization to excavate or fill in the floodplain, all required permits shall be obtained by the owner from all State and Federal regulatory bodies with jurisdiction in such matters.

- (7) No building permits, inspections, or certificates of occupancy to structures will be issued unless the terms and conditions of this ordinance are met.
- (8) Final plans or other documents that will be archived must be submitted in an electronic format specified by the Director of Community Development and Planning ("CDP Director") as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The City may provide an electronic conversion service for a fee in the amount set forth by City Council resolution. The CDP Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary to implement an electronic archiving program. (Amend Ord 10-011, 1/12/10)

#### **Section 4.04 Variance Procedures**

- (1) The City Council shall hear and render judgment on requests for variances from the requirements of this ordinance in accordance with this ordinance and 44 C.F.R. Part 60.
- (2) The City Council 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 Chapter.
- (3) Once the City Council's decision is final, any person or persons aggrieved by the decision of the City Council may appeal such decision to a court 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.

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- (6) Upon consideration of the factors noted above and the intent of this ordinance, City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Section 1.03).
- (7) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (8) 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.
- (9) 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) The Floodplain Administrator shall provide signed, written notice to the applicant that (i) the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and such construction increases risks to life and property; and (ii) that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage, as those provisions may be amended in Section 60.6(a)(5) of the National Flood Insurance Program Regulations.

- (10) 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 Section 4.04(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.
- (11) Variances and appeals can only be considered upon submittal of an appeal letter or request for variance to the Floodplain Administrator.
- (a) Applicants may be required to submit additional information which the Floodplain Administrator may deem necessary to review the appeal or request for variance.
- (b) Each appeal or request for variance shall be accompanied by an appeal/variance review fee as established by resolution of the City Council, payable to the City, no part of which shall be refundable, unless the appeal or request for variance is withdrawn by the Applicant prior to the Floodplain Administrator's review of the appeal or request, in which case the City shall refund the fee to the Applicant.
- (c) Upon receipt of the appeal or request for variance, the Floodplain Administrator shall review and determine compliance with the provisions of this ordinance and applicable policies.
- (12) Prior to the request being considered, the variance review fee and, at minimum, the following supporting information shall be forwarded to the Floodplain Administrator for review and recommendations:
- (a) Plans drawn to scale showing the nature, location, dimensions and elevation of the property, existing or proposed structures, fill, storage of materials, floodproofing measures and the relationship of the above to the location of the channel and floodway and the minimum building elevation.
- (b) Furnish the following additional information as is deemed necessary by the Floodplain Administrator

for the evaluation of the effects of the proposed use upon flood flows and other factors necessary to render an opinion on the suitability of the proposed use:

- (i) Cross-sections showing the channel of the stream, elevation of land areas adjoining each side of the channel, and cross-sectional areas to be occupied by the proposed development.
  - (ii) A site plan showing elevations or contours of the ground, pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing streets, water supply, sanitary facilities, soil types and other pertinent information.
  - (iii) Profile showing the slope of the bottom of the channel or flow line of the stream.
  - (iv) Hydraulic information including water surface profiles for a minimum of the 25- and 100-year events for existing and proposed improvements.
  - (v) Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.
  - (vi) Photographs showing existing land uses and vegetation upstream and downstream.
- (13) The City Council may attach conditions to the granting of a variance as it deems necessary to further the purposes of this ordinance. The following conditions may be included without limitation:
- (a) Modification of waste disposal and water supply facilities.
  - (b) Limitations on periods of use and operation.
  - (c) Imposition of operation controls and bonding or other form of surety.

(d) Requirements for construction of channel modifications, dikes, levees and other protective measures.

(e) Floodproofing measures.

(Adopt Ord 09-049, 9/1/09)

**ARTICLE V**

**PROVISIONS FOR FLOOD HAZARD REDUCTION**

**Section 5.01 General Standards**

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 5.02    Specific Standards**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 3.02, (ii) Section 4.02(8), or (iii) Section 5.03(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 and finished garage), elevated 2 feet above the fully urbanized 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 Section 4.03(1)a 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 and finished garage) elevated 2 feet above the fully urbanized base flood level or together with attendant utility and sanitary facilities, be designed so that below the fully urbanized 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. 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 2 feet above the fully urbanized base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (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 2 feet above the fully urbanized 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 Section 4.03(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 5.03 Standards for Subdivision Proposals**

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 1.02, 1.03, and 1.04 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 Section 3.03; Section 4.03; and the provisions of Article 5 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 Article 3, Section 3.02 or Section 4.02(8) of this ordinance.

- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) 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 5.04 Standards for Areas of Shallow Flooding (AO/AH Zones)**

Located within the areas of special flood hazard established in Section 3.02, 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 have the lowest floor (including basement and finished garage) elevated 2 feet above the fully urbanized 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 2 feet if no depth number is specified).
- (2) All new construction and substantial improvements of **non-residential** structures;
  - (a) have the lowest floor (including basement and finished garage) elevated 2 feet above the fully urbanized 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 2 feet if no depth number is specified),  
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 Section 4.03 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.

**Section 5.05 Floodways**

Floodways - located within areas of special flood hazard established in Section 3.02, 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 Section 5.05(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5 of this ordinance.
- (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 of the National Flood Insurance Program Regulations.

- (4) No person shall proceed with development of property within the floodway until a Floodplain Development Permit has been issued and the development is in compliance with this section.

**Section 5.06 Penalties for Non Compliance**

A person who violates any provision of this Chapter by performing an act prohibited or by failing to perform an act required is guilty of a misdemeanor; each day the violation continues shall be a separate offense.

1. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed Five Hundred Dollars and No Cents (\$500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents (\$2,000.00).
2. If the definition of an offense under this Chapter prescribes a culpable mental state and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, then a culpable mental state is required and the offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents (\$2,000.00). (Amend Ord 10-011, 1/12/10)

ARTICLE VI

TRINITY RIVER CORRIDOR DEVELOPMENT CERTIFICATE PROCESS

Section 6.01 Trinity River Corridor Development Certificate Process

- (1) For the purpose of this Article, the following terms, words and phrases shall have these meanings:

**Corridor Development Certificate Manual** - means the most current edition of the manual by that title which is attached to this ordinance and kept on file in the Office of the City Secretary, as same may be amended from time to time.

**Floodplain Alteration** - means any construction of buildings or other structures, mining, dredging, filling, grading or excavation in the floodplain.

**Trinity River Corridor** - means the portion of the bed and banks of the Trinity River and all of the adjacent land area and all watercourses contained within the boundaries of the river floodplain within the Arlington city limits.

- (2) A person commits an offense if he or she makes any floodplain alteration within the Trinity River Corridor without first obtaining a Corridor Development Certificate from the Floodplain Administrator, unless an exemption or variance has been obtained in accordance with Subsection (5) of this section.
- (3) An application for a Corridor Development Certificate must be filed with the Floodplain Administrator on a form furnished by the Floodplain Administrator.
- (4) The Floodplain Administrator shall deny an application for a Certificate, unless it complies with the standards contained in the Corridor Development Certificate Manual or unless an exemption from or variance of those standards is obtained.
- (5) Exemptions
- (a) An exemption from the requirements of this section may be obtained if the floodplain alteration involves any of the following activities:

- (i) Ordinary maintenance of and repair to flood control structures.
  - (ii) The construction of outfall structures and associated intake structures if the outfall has been permitted under state or federal law.
  - (iii) Discharge of material for backfill or bedding for utility lines, provided there is no significant change in pre-existing bottom contours and excess materials are removed to an upland disposal area.
  - (iv) Bank stabilization.
  - (v) Small-scale projects that cause minimum change in ground surface elevation and no decrease in hydraulic conveyance and valley storage for the 100-year flood.
  - (vi) Temporary construction-related activity.
  - (vii) Specific Prior Development (also referred to as Grandfathered Projects).
- (b) Application for an exemption must be made to the Floodplain Administrator on a form provided by the Floodplain Administrator.
- (c) If the Floodplain Administrator determines that an application for an exemption falls within one of the categories listed in Paragraph (a) of this Subsection (5), the Administrator shall issue a written exemption from the requirements of this section.
- (6) Trinity River Corridor Variances. If the Floodplain Administrator determines that the application for a Corridor Development Certificate does not comply with all of the standards contained in the Corridor Development Certificate Manual, the applicant may apply for a variance. An application for a variance must be made to the Floodplain Administrator, who shall schedule the application for consideration by the City Council. The City Council may grant a variance when strict enforcement of the Corridor Development Certificate process would cause undue hardship owing to

circumstances unique to the individual property on which the variance from the process is requested. The variance must not violate any provision of federal or state law, result in increased flood levels or endanger life or property.

(Adopt Ord 09-049, 9/1/09)