

FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

SECTION A. 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. Therefore, the Tyler County Commissioners' Court of Tyler County, Texas does ordain as follows:

SECTION B. FINDINGS OF FACT

(1) The flood hazard areas of Tyler County-unincorporated 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's 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 C. 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) Ensure that potential buyers are notified that property is in a flood area.

SECTION D. 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.

ARTICLE 2

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.

ACCESSORY STRUCTURE means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

ACT means the statutes authorizing the National Flood Insurance Program (NFIP) that are incorporated in 42 U.S.C. 4001- et seq.

ADMINISTRATOR means the Administrator of the Federal Emergency Management Agency.

AGENCY means the Federal Emergency Management Agency, Washington DC.

AGRICULTURAL STRUCTURE for floodplain management purposes, means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with production, harvesting, storage, raising or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

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 chance 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 ratemaking 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. For purposes of these regulations, the term “special flood hazard area” (SFHA) is synonymous in meaning with the phrase “area of special flood hazard.”

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

BASE FLOOD ELEVATION (BFE) is the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V, V1-V30 or VE that indicates the water surface elevation resulting from the flood that has a 1-percent 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.

BASE LEVEL ENGINEERING (BLE) are flood risk datasets that meet the technical mapping standards outlined in FEMA Policy 204-078-1 Standards for Flood Risk Analysis and Mapping and include estimated floodplain extents (10-, 1- and 0.2-percent annual chance events), water surface elevation grids (1- and 0.2-percent annual chance events), flood depth grids (1- and 0.2-percent annual chance events) and Hazardous Flood Risk Assessment.

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.

BUILDING —see *Structure*.

CHIEF EXECUTIVE OFFICER of the community (CEO) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

CLOSED BASIN LAKE means a lake with no outlet or a lake with inadequate regulated or elevated outlets.

COMMUNITY means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization or Alaska Native village or

authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

CRITERIA means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in this ordinance.

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.

CURVILINEAR LINE means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

DEVELOPED AREA means an area of a community that is:

(1) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential and commercial activities; and

(a) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(b) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(c) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(2) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least three sides to areas meeting the criteria of paragraph (1) at the time the designation is adopted.

(3) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual *start of construction* of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted, and construction of structures is

underway. Residential subdivisions must meet the density criteria in paragraph (1)(c).

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.

ELIGIBLE COMMUNITY OR PARTICIPATING COMMUNITY means a community for which the Federal Insurance Administrator has authorized the sale of flood insurance under the NFIP.

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.

EMERGENCY PROGRAM means the initial phase of a community's participation in the NFIP, as prescribed by Section 1306 of the Act.

EROSION means the process of either rapid or gradual wearing away of land masses.

EXCEPTION means a waiver from the provisions of this ordinance directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

EXCEPTIONAL HARDSHIP means, for the purposes of *variance* from this ordinance, the exceptional difficulty that would result from a failure to grant the requested variance. The hardship must be exceptional, unusual and specific to the property involved, not to the personal circumstances of the permit applicant.

EXISTING CONSTRUCTION means, for the purposes of determining insurance 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.

EXISTING STRUCTURES —see *Existing Construction*.

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:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(c) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition.

FLOOD DAMAGE-RESISTANT MATERIAL means any building product [material, component or system] capable of withstanding direct and prolonged contact with flood waters without sustaining significant damage. “Prolonged contact” means at least 72 hours and “significant damage” means any damage requiring more than cosmetic repair (including cleaning, sanitizing and resurfacing – sanding, repair of joints or repainting – of the material).

FLOOD ELEVATION DETERMINATION means a determination by the Federal Insurance Administrator of the water surface elevations of the *base flood*, that

is, the flood level that has a 1-percent or greater chance of occurrence in any given year.

FLOOD ELEVATION STUDY—see *Flood Insurance Study*.

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood or mudslide (i.e., mudflow)-related erosion areas having special hazards have been designated as Zones A, M and/or E.

FLOOD INSURANCE means the insurance coverage provided under the *Program*.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which the Federal Insurance Administrator has delineated both the *special hazard areas* and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOOD INSURANCE STUDY (FIS) 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 OPENING is a non-engineered or engineered opening in foundation walls and walls of enclosures that relieve hydrostatic loads to meet basic performance requirements to prevent flotation, collapse and lateral movement due to flood forces. Non-engineered openings do not have moving parts and may be used to meet this ordinance's prescriptive requirement for 1 square inch of net open area for every square foot of enclosed area. Engineered openings may be used if designed and certified by a registered design professional as meeting certain performance characteristics.

FLOODPLAIN OR FLOOD-PRONE AREA means any land area susceptible to being inundated by water from any source (see *Flood* or *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.

FLOODPROOFING 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.

FLOOD-RELATED EROSION means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels, or suddenly caused by an unusually high water level in a natural body of water accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in *flooding*.

FLOODWAY — see *Regulatory Floodway*.

FLOODWAY ENCROACHMENT LINES mean the lines marking the limits of floodways on Federal, State and local floodplain maps.

FREEBOARD means a factor of safety, usually expressed in a foot and a half above a flood level, for purposes of floodplain management. *Freeboard* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings and the hydrological effect of urbanization of the watershed.

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 in the Texas Historical Commission's inventory as a Recorded Texas Historic Landmark or State Antiquities Landmark; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By the Texas Historical Commission; 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 of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements in this ordinance.

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 for sale.

MAP means the FHBM or the FIRM for a community issued by the Agency.

MEAN SEA LEVEL means, for purposes of the NFIP, the North American Vertical Datum (NAVD) of 1988 or other datum to which base flood elevations shown on a community's FIRM are referenced.

MIXED USE BUILDING means a building that has both residential and non-residential uses.

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.

NON-RESIDENTIAL BUILDING means a commercial or mixed-use building where the primary use is commercial or non-habitational.

ONE-PERCENT ANNUAL CHANCE FLOOD —see *Base Flood*.

PARTICIPATING COMMUNITY, also known as an *eligible community*, means a community in which the Administrator has authorized the sale of flood insurance.

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

PLAYA means a dry, vegetation-free, flat area at the lowest part of an undrained desert basin. It is a location where ephemeral lakes form during wet periods.

PRINCIPALLY ABOVE GROUND means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

PROGRAM means the National Flood Insurance Program authorized by 42 U.S.C. 4001 through 4128.

RECESSION RATE is the average rate, in feet per year, at which an eroding shoreline moves landward.

RECREATIONAL VEHICLE means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REFERENCE FEATURE is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

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.

REMEDY A VIOLATION means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

RESIDENTIAL BUILDING means a non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, two- to four-family or other residential building.

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

SHEET FLOW AREA —see *Area of Shallow Flooding*.

SINGLE-FAMILY DWELLING means either:

(1) A residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area; or

(2) A single-family residential unit within a two- to four-family building, other residential building, business or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

60-YEAR SETBACK means a distance equal to 60 times the average annual long term recession rate (erosion) at a site, measured from the reference feature.

SPECIAL FLOOD HAZARD AREA —see *Area of Special Flood Hazard*.

SPECIAL HAZARD AREA means an area having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M or E.

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 structures*, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a *substantial improvement*, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STORM CELLAR means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar windstorm activity.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Structure, for insurance purposes, means:

(1) A building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

(2) A manufactured home (a “manufactured home,” also known as a “mobile home,” is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

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*.

30-YEAR SETBACK means a distance equal to 30 times the average annual long term recession rate (erosion) at a site, measured from the reference feature.

VARIANCE means a grant of relief by a community from the terms of a floodplain management regulation.

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 this flood damage prevention ordinance 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.

ZONE OF IMMINENT COLLAPSE means an area subject to erosion adjacent to the shoreline of an ocean, bay or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

ARTICLE 3

GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of Tyler County.

SECTION B. 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 Tyler County Texas and Unincorporated areas," dated April 04, 2011, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated April 04, 2011, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required for all proposed construction and other development, including the placement of manufactured homes, within Zones A1-30, A99, AE, A, AH and AO on the community's FIRM and any development within Zone A on the community's FHBM or FIRM to ensure conformance with the provisions of this ordinance.

SECTION D. 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 E. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate or impair any existing ordinances, 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 F. 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 G. WARNING AND DISCLAIMER OF 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 hazard 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.

ARTICLE 4

ADMINISTRATION

SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Emergency Management Coordinator of the Tyler County Emergency Management Office in Tyler County 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 - Insurance and Hazard Mitigation – Criteria for Land Management and Use) pertaining to floodplain management.

SECTION B. 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) Maintain for public inspection and furnish, upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of floodproofing and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed.

(3) Review permit application to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(4) Review, approve or deny all applications for development permits required by adoption of this ordinance.

(5) 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.

(6) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to Article 5 of this ordinance, as criteria for requiring that new construction, substantial improvement or other development in Zone A on the community's FHBM or FIRM meet the standards in Article 5, Section B and Article 5, Section E of this ordinance;

(7) Where base flood elevation data are utilized within Zone A or A99 on the community's FHBM or FIRM:

(a) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures; and

(b) Obtain, if the structure has been floodproofed in accordance with Article 5, Section B of this ordinance, the elevation (in relation to mean sea level) to which the structure was floodproofed; and

(c) Maintain a record of all such information with the official designated by the community under § 59.22 (a)(9)(iii).

(8) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazard (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.

(a) Where Base Level Engineering is available:

(i) Base Level Engineering data shall be reviewed and reasonably used in FEMA-identified Special Flood Hazard Areas where base flood

elevations and floodway data have not been identified and in areas where FEMA has not identified Special Flood Hazard Areas.

(ii) Base Level Engineering data may be used if such source shows increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in Flood Insurance Studies.

(iii) Base Level Engineering data may be reasonably used if such source shows an area as flood-prone that is not shown as flood-prone on FIRMs and Flood Insurance Studies.

(9) Notify, in riverine situations, adjacent communities, the State Coordinating Agency and 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 Insurance Administrator.

(10) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(11) When base flood elevation data has not been provided in accordance with Article 3, Section B, 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.

(12) 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 1 foot at any point within the community.

(13) Notwithstanding any other provisions of this ordinance, a community may approve certain development in Zones A1-30, AE and AH on the community's FIRM which increase the water surface elevation of the base flood by more than 1 foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of § 65.12 and receives the approval of the Federal Insurance Administrator.

SECTION C. 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) Certification from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section A and Section B (2).

(e) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(f) Maintain a record of all such information in accordance with Article 4, Section B (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 flood waters 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 D. 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 that 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 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 Section C (2) of this Article have been fully considered. As the lot size increases beyond 1/2-acre, the technical justification required for issuing the variance increases.

(6) 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 (Article 1, Section C).

(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 or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any applicant to whom 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.

(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:

(a) The criteria outlined in Section D (1-9) of this Article are met; and

(b) 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.

ARTICLE 5

PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of special flood hazard within 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 and 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) All new or 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) All new or replacement on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

SECTION B. SPECIFIC STANDARDS

In all areas of special flood hazard where base flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B (8) or (iii) Article 5, Section C (3), the following provisions are required:

(1) **Residential Construction** – All new construction and substantial improvement of any residential structures within Zones A1-30, AE, A and AH on the community’s FIRM shall have the lowest floor (including basement) elevated to or 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 Article 4, Section C (1) (a), is satisfied.

(2) **Non-residential Construction** – All new construction and substantial improvements of any nonresidential structures within Zones A1-30, AE, A and AH on the community’s FIRM shall

(a) Have the lowest floor (including basement) elevated to or above the base flood level; or

(b) 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; and

(c) Where a nonresidential structure is intended to be made watertight below the base flood elevation:

(i) 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 for meeting the provisions of Section B (2) (a-b) or Section D in this Article.

(ii) 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** – All 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 flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two 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 flood waters.

(4) Manufactured Homes -

(a) All manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse and 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) All manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM on sites shall be:

(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 or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(c) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section shall be elevated so that either:

(i) The lowest floor of the manufactured home is at or 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** - Recreational vehicles placed on sites within Zones A1-30, AH and AE on the community's FIRM shall be either:

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

(b) Be fully licensed and ready for highway use, or

(c) Meet the permit requirements of Article 4, Section C (1), and the elevation and anchoring requirements for *manufactured homes* in paragraph (4) of this Article.

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.

(6) **Detached Accessory Structures** – Detached accessory structures used only for parking of vehicles and storage are permitted at grade if the following are satisfied:

(a) In special flood hazard areas (Zones A, AE, AH, AO and A1-30), are not larger than a one-story, two-car garage and walls have flood openings in compliance with the requirements of Article 5, Section B (3) above;

(b) Are anchored to resist flotation, collapse and lateral movement;

(c) Flood damage-resistant materials used below the base flood elevation comply with the requirements of Article 5, Section A (3);

(d) Mechanical, electrical and utility equipment comply with the requirements of Article 5, Section A (4); and

(e) Accessory structures shall be limited to not more than 600 square feet in total floor area.

SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS

(1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C and D 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 Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this ordinance.

(3) Base flood elevation data shall be generated for and included as part of subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) which is greater than 50 lots or 5 acres, whichever is lesser.

(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 D. 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 have the lowest floor (including basement) elevated to or 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 2 feet if no depth number is specified), or

(2) All new construction and substantial improvements of **non-residential** structures:

(a) Have the lowest floor (including basement) elevated to or 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 2 feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities, be designed to be completely floodproofed to that level to meet the floodproofing standards specified in Article 5, Sections A and B (2).

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section C are satisfied.

(4) Adequate drainage paths shall be provided around structures on slopes to guide flood waters around and away from proposed structures.

SECTION E. 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) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than 1 foot at any point.

(2) Prohibit encroachments, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(3) If Article 5, Section E (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

(4) Notwithstanding any other provisions of this ordinance, 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 applies for a conditional FIRM and floodway revision, fulfills the requirements

for such revisions as established under the provisions of § 65.12 and receives the approval of the Federal Insurance Administrator.

SECTION H. 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 I. PENALTIES FOR NON-COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance 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 ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Tyler County Commissioners' Court from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION J. CERTIFICATION OF ADOPTION

APPROVED: _____
Tyler County Judge

PASSED: _____
June 8, 2026

ORDINANCE BECOMES EFFECTIVE: _____
June 8, 2026

I, the undersigned, Milton Powers, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the Tyler County Commissioners' Court at a regular meeting duly convened on June 8, 2026.

Janet Brown, Tyler County Clerk