

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AMENDING THE CITY OF BAY CITY CODE OF ORDINANCES CHAPTER 46 FLOODS; ADOPT FLOODPLAIN MANAGEMENT MEASURES THAT SATISFY 44 CODE OF FEDERAL REGULATIONS (CFR) SECTION 60.3(d) OF THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) REGULATIONS; ADOPT THE NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE STUDY (FIS) WITH ACCOMPANYING FLOOD INSURANCE RATE MAPS DATED JANUARY 15, 2021; PROVIDING AN EFFECTIVE DATE; AND DIRECTING THE CITY SECRETARY TO PUBLISH THE CAPTION IN ACCORDANCE WITH THE CITY CHARTER.**

**WHEREAS**, the Section 2.02 of the City's Charter permits the City to pass and enforce ordinances, not inconsistent with the Charter and State law, upon any subject expedient for the life; general welfare; health, morals; comfort; safety; amusement; quiet; prosperity; and convenience of the City, its inhabitants, and property; and may provide suitable penalties for the violations of any ordinance;

**WHEREAS**, Chapter 46 of the City's Municipal Code of Ordinances promotes the public health, safety and general welfare and minimizes public and private losses due to flood conditions; and

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

**WHEREAS**, certain areas of the City of Bay City are subject to periodic flooding, causing serious damages to properties within these areas; and

**WHEREAS**, under the National Flood Insurance Act of 1968, as amended residents of the City of Bay City can purchase Federally subsidized flood insurance if the City qualifies for, and participates in the National Flood Insurance Program; and

**WHEREAS**, it is the intent of this City Council to qualify for participation in the National Flood Insurance Program and to require the recognition and evaluation of flood hazards for all proposed developments within the identified floodplains of the City of Bay City; and

**WHEREAS**, the City Council of the City of Bay City has the legal authority to adopt and enforce floodplain management criteria to reduce future flood losses pursuant to Subchapter I, Section 16.315 of the Texas Water Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS THAT:**

**Section 1.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

- a. The flood hazard areas of the City of Bay City 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.
- b. 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 2.** The City of Bay City's Municipal Code of Ordinances, Chapter 46 (entitled "*Floods*"), is hereby amended in its entirety. The amended Chapter 46 (entitled "*Floods*") is attached as **Exhibit A**, fully incorporated herewith for all purposes.

**Section 3.** Assures the Federal Emergency Management Agency it will enact as necessary, and maintain in force in those areas having flood hazards, adequate floodplain management standards with effective enforcement provisions consistent with the minimum criteria set forth in Section 60.3 of the National Flood Insurance Program Regulations.

**Section 4.** Vests the Mayor, or his/her official designate, with the responsibility, authority, and means to.

- a. Assist the Administrator, at his/her request, in his/her delineation of the limits of the areas having special flood hazards.
- b. Provide such information as the Administrator may request concerning present uses and occupancy of the floodplain.
- c. Cooperate with Federal, State and local agencies and private firms which undertake to study, survey map, and identify floodplain areas, and cooperate with neighboring political subdivisions with respect to management of adjoining floodplain areas in order to prevent aggravation of existing flood hazards.
- d. Submit on as requested by the Administrator, a biennial report to the Administrator on the progress made during the past year within the City in the development and implementation of floodplain management measures.
- e. Upon occurrence, notify the Administrator in writing whenever the boundaries of the City have been modified or changed by annexation of new areas or if the City no longer has the authority to enforce floodplain management regulations in a particular area. Include within such notification a copy of a map of the City clearly delineating the new corporate limits or new area for which the City has assumed or has relinquished floodplain management regulatory authority.

**Section 5.** Appoints the Director of Public Works to maintain for public inspection and to furnish upon request, any certificates of flood-proofing, and information on the elevation (in relation to mean sea level) of the level of the lowest habitable floor of all new and substantially

improved structures located within the identified floodplain of the City of Bay City. The information should include whether or not such structures contain a basement, the elevation of the basement, and if the structure has been flood-proofed, the elevation to which the structure was flood-proofed.

**Section 6.** The City Secretary is hereby authorized and directed to provide all documents and notices required by state law to effect this Ordinance.

**Section 7.** This Ordinance shall be in full force and effect from and after its final passage and any publication required by law.

**PASSED AND APPROVED** on this \_\_\_\_\_ day of January 2021.

\_\_\_\_\_  
Robert K. Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Jeanna Thompson, City Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Anne Marie Odefey, City Attorney  
ROBERTS, ODEFEY, WITTE & WALL, LLP

Council Member:	Voted AYE	Voted NAY	Absent
Robert K. Nelson	_____	_____	_____
Floyce Brown	_____	_____	_____
Jason Childers	_____	_____	_____
Becca Sitz	_____	_____	_____
Jim Folse	_____	_____	_____
Brent Marceaux	_____	_____	_____

I, Jeanna Thompson, City Secretary of the City of Bay City, do hereby certify that the above and foregoing is a true and correct copy of a Ordinance made and entered by the City Council in regular session, on the \_\_\_\_\_ day of January 2021, as it appear on record in the Minutes of said City Council, Volume \_\_\_\_\_, Page\_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This \_\_\_\_\_ day of January 2021.

## Exhibit A

### Chapter 46 – Floods

Footnotes:

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**State Law reference—** Flood control and insurance act, V.T.C.A., Water Code § 16.311 et seq.

#### ARTICLE I. - IN GENERAL

Secs. 46-1—46-18. - Reserved.

#### ARTICLE II. - FLOOD DAMAGE PREVENTION

##### DIVISION 1. - GENERALLY

Sec. 46-19. - Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**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.

**Appeal** means a request for a review of the chief building inspector's interpretation of any provisions of this article or a request for a variance.

**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 one percent or greater annual chance of flooding to an average depth of one to three feet. This condition occurs where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. 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 one percent chance of being equaled or exceeded in any given year.

**Base flood elevation (BFE)** means 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 one 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.

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

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

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

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

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

**Existing manufactured home park or subdivisions** 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).

**First floor** means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof.

**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 Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**Flood insurance study (FIS).** See "flood elevation study."

**Floodplain or flood-prone area** means any land area susceptible to being inundated by water from any source (see definition of flooding).

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

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

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

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

**Floodway.** See "regulatory floodway."

**Functionally dependent use** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent use" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding 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 manmade 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 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 national geodetic vertical datum (NGVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

**Metal storage container** means a pre-manufactured (not pre-built) accessory structure, commonly known as Conex boxes, sea-containers or cargo containers, designed for use as an individual shipping container in accordance with international standards or a metal structure designed and built for use as an enclosed truck trailer in accordance with department of transportation standards.

**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 (May 28, 1987) 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 an individual, partnership, firm, association, and all other legal entities.

**Recreational vehicle** means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred 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.

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

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

**Special flood hazard area.** See "area of special flood hazard."

**Start of construction** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348)) includes substantial improvement and means the date the building permit was issued; provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The term "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, or a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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



**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either 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 "substantial improvement" does not, however, include either:

- (1) Any projects for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions, or
- (2) Any alterations of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**Variance** means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements, see section 60.6 of the national flood insurance program regulations.)

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

**Water surface elevation** means the height, in relation to the national geodetic vertical datum (NGVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Code 1985, § 10-5; Code 2000, § 46-31; [Ord. No. 1608, § 2, 8-10-2017](#) )

Sec. 46-20. - Statutory authorization.

The Legislature of the State of Texas has in the Flood Control Insurance Act, V.T.C.A., Water Code § 16.315, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.

(Code 1985, § 10-1; Code 2000, § 46-32; [Ord. No. 1608, § 2, 8-10-2017](#) )

Sec. 46-21. - Findings of fact.

- (a) The substantial growth of population and construction in the city in the last decade has resulted both in prosperity and congestion. In addition, the increased number of structures and square feet of paving have reduced natural water absorption by the ground and obstructed natural drainage paths. The mayor and city council are dedicated to providing the most efficient drainage practical, given the inherent natural obstacle of our gently sloping bay prairie.
- (b) The flood hazard areas of the city are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect public health, safety and general welfare.
- (c) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards and floodplains which increase flood heights and velocities. When these obstructions are inadequately anchored, they also damage property in other areas. Structures and uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.
- (d) The city has had a program for the past several years in connection with the drainage district to improve the drainage in and around the city.

(Code 1985, § 10-2; Code 2000, § 46-33; [Ord. No. 1608, § 2, 8-10-2017](#) )

Sec. 46-22. - 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;
- (7) Ensure the potential buyers are notified that property is in a flood area; and
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Code 1985, § 10-3; Code 2000, § 46-34; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-23. - Methods of reducing flood losses.

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

- (1) Restrict or prohibit uses which 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 floodwaters;
- (4) Control filling, grading, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1985, § 10-4; Code 2000, § 46-35; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-24. - Territorial applicability.

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Code 1985, § 10-6; Code 2000, § 46-36; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-25. - Compliance and penalties for noncompliance.

- (a) No structure or land shall hereafter be located, altered, constructed, extended, converted or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.
- (b) 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 \$500.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Code 1985, § 10-7; Code 2000, § 46-37; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-26. - Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration in the current scientific and engineering report entitled "The Flood Insurance Study (FIS) for the City of Bay City Matagorda County," dated January 15, 2021, with accompanying flood insurance rate maps and/or flood boundary-floodway maps (FIRM and/or FBFM) dated January 15, 2021 and any revision thereto are hereby adopted by reference and declared to be a part of this ordinance. The flood insurance study is available at the office of the director of public works.

(Code 1985, § 10-8; Code 2000, § 46-38; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-27. - 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.

(Code 1985, § 10-9; Code 2000, § 46-39; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-28. - 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 city; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Code 1985, § 10-10; Code 2000, § 46-40; [Ord. No. 1608, § 2, 8-10-2017](#).)

Sec. 46-29. - 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 manmade 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 city or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Code 1985, § 10-11; Code 2000, § 46-41; [Ord. No. 1608, § 2, 8-10-2017](#).)

Secs. 46-30—46-46. - Reserved.

## DIVISION 2. - ADMINISTRATION

Sec. 46-47. - Designation of the floodplain administrator.

- (a) The director of public works or his/her designee is hereby appointed the Floodplain Administrator to administer and implement the provisions of this section and other appropriate sections of 44 CFR (Emergency Management and Assistance-National Flood Insurance Program Regulations) pertaining to floodplain management.
- (b) The duties and responsibilities of the floodplain administrator shall include, but not be limited to:
  - (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 section 46-48;
  - (4) Review permits for proposed development to ensure 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 USC 1334) from which prior approval is required;
  - (5) Make the necessary interpretation 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 person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 46-49;
  - (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 such watercourse is maintained;
  - (8) When base flood elevation data has not been provided in accordance with section 46-26, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer the provisions of the article; and
  - (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 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 at all 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.

(Code 1985, § 10-26; Code 2000, § 46-66; [Ord. No. 1608, § 2, 8-10-2017](#).)

**Editor's note—** [Ord. No. 1608, § 2, adopted August 10, 2017](#), amended § 46-47 to read as set out herein. Previously § 46-47 was titled "Enforcement officer."

Sec. 46-48. - Development permit.

- (a) A development permit shall be required to ensure conformance with the provisions of this ordinance.

- (b) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him 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; storage of materials; drainage facilities; and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
- (1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
  - (2) Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
  - (3) A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of section 46-73(2);
  - (4) A description from a registered professional engineer of the extent to which any watercourse or natural drainage will be altered or relocated as a result of the proposed development.
  - (5) Maintain a record of all such information in accordance with section 46-47(b)(1).
- (c) Approval or denial of a floodplain development permit by the floodplain administrator shall be based on all of the provisions of this article and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
  - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (3) The danger that materials may be swept onto other lands to the injury of others;
  - (4) The compatibility of the proposed use with existing and anticipated development;
  - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (6) 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;
  - (7) 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;
  - (8) The necessity to the facility of a waterfront location, where applicable;
  - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
  - (10) The relationship of the proposed use to the comprehensive plan for that area.

(Code 1985, § 10-27; Code 2000, § 46-67; [Ord. No. 1608, § 2, 8-10-2017](#).)

#### Sec. 46-49. - Variances.

- (a) The planning commission shall hear and render judgment on requests for variances from the requirements of this article.
- (b) The city council shall hear and render judgment on an appeal of a decision of the planning commission or a determination made by the floodplain administrator in the enforcement or administration of this section.
- (c) Any person aggrieved by the decision of the city council may appeal such decision to the district court.
- (d) The floodplain administrator shall maintain a record of all actions involving an appeal including technical information, and shall report variances to the Federal Insurance Administration upon request.

- (e) 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 section.
- (f) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half-acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 46-48(c) have been fully considered. As the lot size increases beyond one-half-acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted in this section and the intent of this article, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article.
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) The following are prerequisites for granting variances:
  - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (2) Variances shall only be issued upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    - c. A determination that the granting of a variance will not result in:
      - 1. Increased flood heights;
      - 2. Additional threats to public safety or extraordinary public expense;
      - 3. Create nuisances;
      - 4. Cause fraud on or victimization of the public; or
      - 5. Conflict with existing local laws or ordinances.
  - (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a 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.
- (j) 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:
  - (1) The criteria outlined in subsections (a) through (i) are met; and
  - (2) 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.
- (k) 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.

(Code 1985, § 10-28; Code 2000, § 46-68; [Ord. No. 1608, § 2, 8-10-2017](#).)

Secs. 46-50—46-71. - Reserved.

DIVISION 3. - FLOOD HAZARD REDUCTION

Sec. 46-72. - General standards.

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

- (1) All new construction and 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 and utility equipment resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, 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 floodwaters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters; and
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Code 1985, § 10-46; Code 2000, § 46-91; [Ord. No. 1608, § 2, 8-10-2017](#).)

**Editor's note—** [Ord. No. 1608, § 2, adopted August 10, 2017](#), amended § 46-72 to read as set out herein. Previously § 46-72 was titled "Areas of special flood hazard."

Sec. 46-73. - Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in sections 46-26, 46-47(b)(8) or 46-75(3), the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to 24 inches 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 section 46-48(b)(1), is satisfied.
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to 24 inches above the level of the base flood elevation or, together with attendant utility and sanitary facilities, be flood proofed 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. 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 structure are flood proofed 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 one-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 one-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 24 inches above the base flood elevation 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 24 inches above the 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 subsection (4) be elevated so that either:
  - 1. The lowest floor of the manufactured home is 24 inches above the base flood elevation, or
  - 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely 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 Article 4, Section C (1), and the elevation and anchoring requirements for "manufactured homes" in subsection (4). 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) *Metal storage containers.*

- a. Permanent metal storage containers are prohibited in areas of special flood hazard and the regulatory floodway.
- b. Require that temporary metal storage container placed on sites within zones A1-30, AH, and AE on the community's FIRM (i) be on the site for fewer than 180 consecutive days, and (ii) be designed to withstand a ten psf uplift load. Design shall be signed and sealed by a registered professional engineer.



(Code 1985, § 10-47; Code 2000, § 46-92; [Ord. No. 1608, § 2, 8-10-2017](#))

**Editor's note—** [Ord. No. 1608, § 2, adopted August 10, 2017](#), amended § 46-73 to read as set out herein. Previously § 46-73 was titled "Area where base flood elevation known."

Sec. 46-74. - Standards for areas of shallow flooding (AO/AH zones).

Located within the areas of special flood hazard established in section 46-26 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to 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 three feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures shall:
  - 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 three feet if depth number is not 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, the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in section 46-48(b)(1), are satisfied.
- (4) Require within AO/AH zones, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Code 1985, § 10-48; Code 2000, § 46-93; [Ord. No. 1608, § 2, 8-10-2017](#))

Sec. 46-75. - Standards for subdivision proposals.

- (a) All subdivision proposals including the placement of manufactured home parks and manufactured home subdivisions shall be consistent with sections 46-21, 46-22 and 46-23.
- (b) All proposals for the development of subdivisions including mobile home parks and mobile home subdivisions shall meet floodplain development permit requirements of section 46-48, 46-72 and 46-73.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and mobile home subdivisions which are greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to sections 46-26 and 46-47(8).
- (d) All subdivision proposals including the placement of manufactured home parks and mobile home subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals including mobile home parks and mobile home subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(Code 1985, § 10-49; Code 2000, § 46-94; [Ord. No. 1608, § 2, 8-10-2017](#))

Sec. 46-76. - Reserved.

Sec. 46-77. - Floodways.

Floodways located within areas of special flood hazard established in section 46-26, 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 subsection (a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 46-72 and 46-73.
- (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.

( [Ord. No. 1608, § 2, 8-10-2017](#) )

Sec. 46-78. - Payment of fees.

All persons applying for a floodplain development permit described herein shall be required to submit a flood zone elevation confirmation fee as established in Appendix B of the City of Bay City Code of Ordinances. It shall be a violation of this section to start construction in an area of special flood hazard until such fee has been paid and the floodplain development permit approved.

( [Ord. No. 1608, § 2, 8-10-2017](#) )

Sec. 46-79. - Penalties; violations; convictions.

(a) *Penalties.*

- (1) Any person who violates any of the provisions of this article shall be punished by a fine of not more than \$2,000.00, and each and every day of continuance thereof shall constitute a distinct and separate offense.
- (2) Any person, firm, corporation or association who is caught violating any section of this chapter will not be eligible to apply or renew for one full year.

(b) *Violations.* Violation of any of the terms or provisions of this article by any corporation, association, or legal entity shall subject the officers and agents actively in charge of the business or such corporation, association, or legal entity to the penalty provided in this section.

(c) *Convictions.* Conviction under the provisions of this article shall be deemed just cause for the revocation of any license or permit which such person may have and/or hold under the provisions of this article.

( [Ord. No. 1608, § 2, 8-10-2017](#) )