

Chapter 8 - BUILDINGS AND BUILDING REGULATIONS^[1]

ARTICLE I. - IN GENERAL

Secs. 8-1—8-18. - Reserved.

ARTICLE II. - TECHNICAL CODES

Sec. 8-19. - International codes adopted.

The following codes are hereby adopted by reference with described changes and substitutions as described below:

- (1) 2009 International Building Code.
- (2) 2009 International Fuel Gas Code.
- (3) 2009 International Mechanical Code.
- (4) 2009 International Plumbing Code.
- (5) 2009 International Property Maintenance Code.
- (6) 2009 International Residential Code.
- (7) 2009 International Energy Conservation Code.
- (8) 2011 National Electrical Code.

(Ord. No. 2015-17, § 1, 9-15-2015)

Sec. 8-20. - Administration of codes.

Within said codes, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties for the administration of the codes is the mayor or the mayor's designee.

(Ord. No. 2015-17, § 2, 9-15-2015)

Sec. 8-21. - Required construction permit; certificate of occupancy.

- (a) Prior to the commencement of any construction project within the city, a permit shall be required and must be obtained from the city, under the following terms:
 - (1) The city council shall adopt a permit application and permit fee schedule as currently established or as hereafter adopted by resolution of the city council from time to time;
 - (2) Any person seeking a permit must fill out a permit application and have such application reviewed and approved by the city;
 - (3) Any person seeking a permit must pay a fee in accordance with the permit fee schedule;
 - (4) A permit issued by the city shall have a term of 12 months; and
 - (5) The term of a permit may be extended one time for a period not to exceed six months, without the applicant incurring additional fees, if the request is made prior to the expiration of such permit and substantial construction has commenced at the time of the request for extension.
- (b) Prior to the occupancy of any residential or commercial building or structure within the city, a certificate of occupancy shall be required and must be obtained from the city, under the following terms:

- (1) A certificate of occupancy shall be required prior to occupancy or habitation in any form for the following ty new residential construction, newly installed mobile homes, new commercial structures, and new occupant: existing commercial structures;
- (2) A certificate of occupancy shall be provided only after the successful conclusion and completion of the final inspection by the city building code official;
- (3) The city shall not allow permanent connection of utilities such as electric power, water, sewer or septic, natural gas, and/or liquid propane gas service to be made until the issuance of the certificate of occupancy;
- (4) Temporary power poles for permitted construction shall be allowed. As a safety consideration, if at any time during construction the temporary power pole is inspected and fails to comply with the electrical code adopted by the city, the building code official shall have full authority to require the power provider to suspend or remove service to the temporary power pole;
- (5) At the discretion of the building code official, once all necessary HVAC, plumbing, and electrical inspections have been passed, but prior to the completion of construction, the building code official may issue a temporary certificate of completion to permit temporary connections of electric power to be made for the testing of circuits and other household systems. Such temporary certificate of completion shall remain for a period not to exceed 90 days. After such period, the city will have the authority to require the disconnection of the electrical service unless a certificate of occupancy has been issued;
- (6) The city shall have the right to require the providers of all utilities including, but not limited to, electrical power, water, sewer, natural gas, and liquid propane gas, to withhold permanent connections until the issuance of either a temporary certificate of completion or permanent certificate of occupancy; and
- (7) The city has full authority to contact service providers to require the suspension or disconnection of utility services to the property of any residential or commercial building or structure found to be in violation of this article according to the procedures provided herein.

(Ord. No. 2011-13, § 3, 1-17-2012; Ord. No. 2012-04, § 1, 4-17-2012)

Sec. 8-22. - Child's play structures; requirements.

A child's play structure, such as a tree house, shall not be subject to the city permitting requirements as long as the play structure meets the following criteria:

- (1) Must be built and subsequently maintained according to adopted building codes in place at the time of construction as well as all other provisions of this article.
- (2) Must be used as a child's play structure.
- (3) Must not be attached to any building or structure.
- (4) If built within the floodplain, must be either open on two sides or vented per the floodplain administrator, at a ratio of one square inch for every square foot of area within the floodplain.
- (5) A play house/tree house structure must have a footprint less than 100 square feet.
- (6) Swing sets are not regulated.

If, upon inspection by the city's building inspector or code compliance inspector, a child's play structure is found to be unsafe or otherwise out of compliance with any provision of this section, the homeowner shall be subject to a fine of \$25.00 per day. Each day shall constitute a separate violation.

(Ord. No. 2013-09, 12-17-2013)

Sec. 8-23. - Building code.

To the extent there is a conflict between the following sections 8-24 and 8-25 and the 2009 International Building Code, the more stringent of the two shall apply.

(Ord. No. 2015-17, § 4, 9-15-2015)

Sec. 8-24. - Foundations.

- (a) All foundations shall be engineered, signed and sealed, site-specific, based upon an engineered soils report, site-specific. Post tension cable foundation shall have a minimum of two No. 5 rebar, grade 60 in the bottom of each beam with two No. 5 rebar corner bars bent 90 degree with 24 inch long sides at each connection. Steel reinforced concrete foundations shall have a minimum of six No. 5 rebar, grade 60 with No. 3 rebar "stirrups" spaced at a minimum of 24 inches O.C. Corners shall have a minimum of six No. 5 rebar corner bars bent 90 degree with 24 inch long sides at each connection. Foundation grade beams shall be sized a minimum of 12 inches wide by 24 inches tall as measured from the top of the slab. The area of foundation slab that is supported by the grade beams shall be a minimum of four inches concrete, 3000 PSI or greater, with either six GA. welded wire mesh mats (not rolls) or No. 3 rebar mat paced 16 inches O.C. supported by appropriate "chairs at 2" O.C.
- (b) Foundation specifications.
- (1) Footings and foundations shall be constructed of reinforced concrete with the following exception: Temporary structures of secondary buildings not exceeding one story in height and 200 square feet in area shall be exempt from the engineering requirements of this subsection. One-family and two-family dwellings shall be required to have footings and foundations of reinforced concrete. All footings shall extend at least 12 inches into undisturbed soil or of soil in a foundation pad, compacted to 95 percent of proctor density.
- (2) Post-tension foundations shall be designed to meet or exceed the standards provided herein and the post tension design institute. A registered professional engineer shall certify to the mayor that the foundation, as built, is in accordance with the plans approved by the city.
- (c) Construction of structures and homes within the 100-year flood plain.
- (1) All new or substantially improved/repared residential structures and homes constructed on land within the designated 100-year floodplain according to the latest flood insurance rate map as established by the Federal Emergency Management Agency in the national flood insurance programs shall be elevated and constructed on a pier and beam foundation. The area under the structure should be graded such that water will not pond.
- (2) No fill shall be allowed on any lot to be used for residential construction of any foundation or structure within the designated 100-year floodplain according to the latest flood insurance rate map as established by the Federal Emergency Management Agency in the national flood insurance programs.

(Ord. No. 2015-17, § 4.01, 9-15-2015; Ord. No. 2016-04, § 2, 7-5-2016)

Sec. 8-25. - Framing/structure.

- (a) For additions or remodels that provide access, the following wind storm anchoring devices shall be installed when site/job specific engineering design is not provided by the builder:
- (1) Simpson strong tie or equal rafters to rafters: 15 inch long strap over the ridge: LSTA 20 gauge or MSTA 18 gauge every other member. Rafter to double top plate: H2A, H2.5, H2.5A or H8 every other member. Double top plate to stud: H2A, H2.5, H2.5A or H8 every other member. Stud to bottom plate: H2A, H2.5, H2.5A or H8 every other member.

- (2) Bottom/sill plate to foundation (concrete): one-half inch diameter J-bolt ten inches long set four feet on cent from each opening or joint in sill plate with two inch square washer and nut, hot dipped galvanized or MAS, "Mudsill anchors. Bottom/sill plate to all wood foundation perimeter: H6 every other member. Second floor coil straps 36 inches long minimum every other member.

(b) International Residential Code and chapter 23 of the International Building Code, to the extent of conflict with the following provisions, is hereby deleted and the following shall apply:

- (1) All walls where plumbing drain, waste and vent lines are located shall be two-inch by six-inch sized lumber minimum.
- (2) All framing shall be no more than 16 inches on center including rafters, joists and vertical framing.
- (3) All lumber, including rafters, joists and vertical framing, shall be No. 3 grade minimum. Utility grade lumber is not allowed for structural applications.

(c) Roof construction of all buildings shall be of metal, slate, tile or fire-retardant fiberglass 225-pound composition shingles or approved equal. No wood shingles or fire retardant treated wood shingles allowed.

(Ord. No. 2015-17, § 4.02, 9-15-2015)

Sec. 8-26. - Existing structures.

2009 International Building Code, section 102.6 existing structures, is hereby amended to add the following paragraphs; and to the extent there is any conflict between these provisions and chapter 34, International Building Code, existing structures, these provisions shall control:

- (1) If, within any 12-month period, alterations or repairs costing in excess of 50 percent of the then physical value of the building are made to an existing building, such building shall be made to conform to the requirements of this code for new buildings.
- (2) If an existing building is damaged in excess of 50 percent of its then physical value before such damage, it shall be made to conform to the requirements of this code for new buildings.
- (3) If the cost of such alterations or repairs within any 12-month period or the amount of such damage as referred to in subsection (2) of this section is more than 25 but not more than 50 percent of the then physical value of the building, the portions to be altered or repaired shall be made to conform to the requirements of this code for new buildings.
- (4) For the purpose of this section, physical value of the building shall be its appraised value as shown on the city's latest tax roll or average of three independent licensed appraisals.
- (5) If the occupancy of any existing building is entirely changed, the building shall be made to conform to the requirements of this code for the new occupancy. If the occupancy of only a portion of an existing building is changed and that portion is separated from the remainder as stipulated in the International Building Code, chapter 3, then only such portion need be made to conform.
- (6) The following are authorized: repair and alterations, not covered by the preceding subsection of this section, restoring a building to its condition previous to damage or deterioration, or altering it in conformity with the provisions of this code or in such manner as will not extend or increase the same kind of materials as those of which the building is constructed; but not more than 25 percent of the roof covering of a building shall be replaced in any period of 12 months unless the entire roof covering is made to conform with the requirements of this code for new buildings.
- (7) Any building which has been damaged by fire or other causes to the extent of more than 50 percent of its value shall be rebuilt in conformity with this article, as though it were a new building, or removed. The building shall be secured from entrance by any unauthorized persons within 24 hours after all embers

are extinguished. A building permit is required before demolition, repair or reconstruction commences which shall be started within 60 days of the date the damage occurs and shall be completed within a reasonable time, but not later than 180 days after the damage occurs. Before occupancy will be permitted a certificate of occupancy shall be required.

(Ord. No. 2015-17, § 4.03, 9-15-2015)

Sec. 8-27. - Site plan.

Section 107.2.5, International Building Code, site plan, is hereby amended by adding thereto subsections (1), (2) and (3) as follows:

- (1) Where a structure is to be built on a foundation which is significantly above grade, such as pier and beam, stemwall, or other foundation type, the subfloor of the first level shall be no higher than four inches from grade immediately below such foundation subfloor regardless of whether the grade is natural ground or a built-up structural foundation pad.
- (2) Where the building site or lot lies within the 100-year floodplain according to the latest flood insurance rate map as established by the Federal Emergency Management Agency in the National Flood Insurance Program, an elevation certificate shall be prepared by a qualified surveyor, licensed by the state, certifying that the elevation of the first floor of the building or structure is at the required height of at least 18 inches above natural ground, 12 inches above the curb of the street, the crown of the street and/or the base flood elevation, whichever is greater. This certificate shall be required once the foundation is formed and ready for inspection.
- (3) An elevation survey shall be prepared by a qualified surveyor, licensed by the state, for each building site or lot showing that all drainage requirements have been satisfied. This shall be required before a certificate of occupancy is issued.

(Ord. No. 2015-17, § 4.04, 9-15-2015)

Sec. 8-28. - Dangerous buildings.

Section 3402.1, International Building Code, definitions shall be amended to replace the definition of "dangerous" with the following:

- (1) *Dangerous.*
 - a. All buildings or structures which have any or all of the following defects shall be deemed dangerous buildings:
 1. Those which have interior walls or other vertical structural members that list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base;
 2. Those which, exclusive of the foundation, show 33 percent or more of damage of structural members or 50 percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;
 3. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;
 4. Those which have been damaged by fire, wind or other causes so as to have become

dangerous to life, morals or the general health and welfare of the occupants or the people of the city;

5. Those which are so dilapidated, decayed, unsafe, unsanitary, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, morals, safety or general welfare of those occupying such building;
 6. Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live therein;
 7. Those, regardless of their structural condition, which have, during times that they were not actually occupied by their owners, lessees or other invitees, been left unsecured from unauthorized entry to the extent that they may be entered and utilized by vagrants or other uninvited persons as a place of harborage or may be entered and utilized by children as a play area;
 8. Those which have parts thereof which are so attached that they may fall and injure members of the public or property;
 9. Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city; and/or
 10. Those buildings existing in violation of any provisions of this article, the V.T.C.A., Local Government Code § 214.001 et seq., the building code, the fire code, or other ordinances of this city, if the violation is of such a nature that the building constitutes a danger to its occupants and to others.
- b. A building that is boarded up, fenced or otherwise secured in any manner may, nevertheless, be deemed to be a dangerous building under the foregoing criteria if:
1. The building constitutes a danger to the public, even though secured from entry; or
 2. It is found that the means utilized to secure the building are not adequate to prevent unauthorized entry of the building in contravention of subsection (1)(a)7 of this section.
- c. Any building or structure which has any or all of the conditions or defects described herein, where such condition or conditions pose a threat or potential threat to life, health, property, or human safety, is also hereby declared to be a public nuisance, and is prohibited as unlawful, and shall be abated according to provisions of this article. It is an offense for an owner or occupant or other person having control of the building or structure to fail to abate such public nuisance. Therefore, failure to abate such condition may also be prosecuted as a criminal misdemeanor offense. It is a further offense and it is unlawful for any person to cause, permit, or allow a dangerous building after the 30th day after the date on which the mayor finds a condition of dangerous building, nuisance and orders abatement or after such extended date as may be lawfully permitted by the mayor.
- d. The city council hereby finds and determines that any building which has any or all of the defects set forth in subsection (1)(a) or (b) of this section is dilapidated, substandard, a nuisance or unfit for human habitation and is a hazard to the public health, safety and welfare.

(2) *Inspections; public hearings on dangerous buildings.* The mayor or the mayor's designee shall:

- a. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of the terms of this article;
- b. Inspect any building, wall or structure reported (as hereafter provided for) by the fire, health or police departments of this city as probably in violation of the terms of this article;

- c. Inspect buildings in the city to determine whether they are dangerous buildings within the terms of this section; and
 - d. Notify the director or the mayor's designee of buildings that are found to be dangerous so that hearings may be scheduled pursuant to this section; and
- e. Appear at all hearings conducted pursuant to this section and testify as to the conditions existing in the dangerous building.

(3) *Authority of city attorney.* The city attorney may:

- a. Prosecute any person failing to comply with the terms of the notices and orders provided for in this article;
- b. Appear at hearings before the mayor or his designee in regard to dangerous buildings;
- c. Bring suit to collect municipal charges, liens, or costs incurred by the city in preparing or causing to be vacated or demolished dangerous buildings; or
- d. Take such other legal action as is necessary to carry out the terms and provisions of this article.

(4) *Notice.*

- a. Upon inspection, if a building has been found to be a dangerous building, written notice, by personal service or by certified mail, return receipt requested, shall be served on persons having an interest in the property, the owner, lienholder, or mortgagee for the property, as shown by the county real property records of the county where the land is located; appraisal district records of the appraisal district in which the building is located; records of the secretary of state; assumed name records of the county in which the building is located; tax records of the city; and utility records of the city. This notice shall inform such persons that a hearing will be held before the mayor or his designated representative in which the city will seek an order requiring the building to be vacated, and/or requiring the building to be repaired and/or demolished and/or secured upon a finding that the building is dangerous and that it constitutes a hazard to the health, safety or welfare of its occupants and/or citizens of this city. Such notice shall also set forth:
 1. The specific conditions which render the building a dangerous building within the standards set forth in this section;
 2. That a hearing will be held before the director or his designated representative in which the city will seek an order that the building be vacated and/or that the building also be repaired and/or demolished and/or secured as provided in this section;
 3. The date, time and place of such hearing;
 4. That all persons having an interest in the property may appear in person and/or be represented by an attorney and may present testimony and may cross examine all witnesses; and
 5. That all persons having an interest in the property will be required to submit at the hearing proof of the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work.
- b. If the address of any person having an interest in the property is unknown, or if notice to any person having an interest in the property is returned undelivered, a copy of such notice shall be posted in a conspicuous place on the building found by the mayor or his designee to be dangerous and such notice shall be published in a newspaper of general circulation within the city. The posting and publishing of such notice shall constitute notice to any person having an interest in the property who does not receive personal notice or notice by mail.

(5) *Conduct of hearings.*

- a. All hearings shall be held by the city council.
 - b. All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, the following rules shall apply to such hearings:
 1. All parties shall have the right to representation by a licensed attorney, though an attorney is not required.
 2. Each party may present witnesses in his own behalf.
 3. Each party has the right to cross examine all witnesses upon request to the city council.
 4. Only evidence presented before the city council at such hearing may be considered in rendering the order.
 5. The person having an interest in the building has the burden of proof to demonstrate the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work.
- c. If no person having an interest in the building appears before the city council at the date and time specified, the city shall produce evidence showing the building to be a dangerous building within the standards set forth in this section and that the same constitutes a hazard to the health, safety and welfare of the citizens.
- d. The city may request that public utilities be disconnected in order that demolition or other nuisance abatement actions may be accomplished without delay in those cases where the structure is open, vacant, dilapidated, or subject to any of the conditions defining dangerous building and public nuisance in this article.

(6) *Findings; placards.*

- a. After completion of the presentation of testimony by all parties appearing, the mayor or other person designated by the city council shall make written findings of fact as to whether or not the buildings are dilapidated, substandard or unfit for human habitation and constitute a hazard to the health, safety or welfare of occupants and/or the citizens, and whether or not the buildings in question are dangerous within the standards set forth in this section, setting out the underlying facts supporting the findings.
- b. If the city council finds that any building is dilapidated, substandard or unfit for human habitation and that same constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens, and that same is a dangerous building within the terms of this section, he shall issue an order directing the owner, occupant and all other persons having an interest in such building, as shown by the deed records of the county clerk where the land is located:
 1. That the building shall be vacated if same is occupied and the mayor finds that the building is in such condition as to make it dangerous to the health, safety or welfare of its occupants;
 2. That, at the owner's option, the building shall be either demolished or repaired (if it can reasonably be brought into compliance by repair);
 3. That the building shall be demolished if it cannot reasonably be repaired; and/or
 4. If the building is unoccupied and the condition of the building is such that it may be brought into compliance by securing it from unauthorized entry, then the order may provide that it be so secured and be kept secured and may include or adopt written specifications that must be complied with in securing the building, and the order may provide that the building be demolished if it is not secured in compliance therewith.
- c. If the city council finds that the building is substandard as above described and in such condition as

to make same dangerous to the health, safety or welfare of its occupants or to the citizens, the city council shall order that the city place a notice in a conspicuous place on such building. Such notice to have the heading "dangerous building" in letters 1¼ high and to read, in letters at least 1¼ inches high, the words:

"DANGEROUS BUILDING

THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING. OCCUPANCY OF THIS BUILDING IS PROHIBITED BY LAW, AS SUCH OCCUPANCY IS DANGEROUS TO THE HEALTH, SAFETY OR WELFARE OF ITS OCCUPANTS. THIS NOTICE IS POSTED (here the notice shall set forth the date and hour such notice is posted). ALL PERSONS MUST VACATE THIS BUILDING NOT LATER THAN FORTY-EIGHT (48) HOURS AFTER THE TIME OF POSTING AND SHALL NOT RE-ENTER THE SAME UNTIL THE MAYOR FINDS THAT THE BUILDING HAS BEEN REPAIRED SO AS TO BE IN COMPLIANCE WITH THE ORDINANCES OF THE CITY OF SIMONTON. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

- d. If the city council finds that the building is in such condition that it is dangerous for anyone to enter, the mayor shall order that the city place a notice in a conspicuous place on such building. Such notice to have a heading stating "dangerous building" in letters at least 1¼ inches high and read in letters at least 1¼ inches high, the words:

"DANGEROUS BUILDING

THE MAYOR OF THE CITY OF SIMONTON HAS FOUND THIS BUILDING TO BE A DANGEROUS BUILDING. NO PERSON SHALL ENTER THIS BUILDING EXCEPT PERSONS AUTHORIZED BY THE CITY OF SIMONTON, AND PERSONS AUTHORIZED BY THE OWNER WHO ENTER SOLELY FOR THE PURPOSE OF CORRECTING THE HAZARDOUS CONDITIONS THEREIN. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

(7) *Opportunity to bring property into compliance.*

- a. The persons having an interest in the property coming under this article shall be given a reasonable period of time in which to comply with the city council's order. Such period not to exceed 30 days unless, in the judgment and discretion of the city council, it is determined that a greater period of time is necessary, such period of time not to exceed 90 days unless the owner or other person having interest in the property has complied with the requirements of V.T.C.A., Local Government Code § 214.001(j), (l). The order shall state the date by which the action ordered must be completed and state that the mayor shall cause the building to be vacated, repaired and/or demolished if the persons having an interest in the property do not comply with the order.
- b. The order of the city council shall be served on all persons having an interest in the property, as shown on the deed records of the county in which the land lies, by registered mail or certified mail, return receipt requested. If the address of a person having an interest in the property as shown on the deed records is unknown, or if such order is returned undelivered, a copy of such order shall be posted in a conspicuous place on such building. Such posting of the order shall constitute notice to any person having an interest in the property who does not receive personal service.
- c. A copy of the order of the city council shall also be filed in the deed records of the county in which the land lies.
- d. If the persons having an interest in the property fail to comply with the order of the city council within the time specified in the order for compliance, the mayor or the mayor's designee shall cause such building to be vacated, repaired and/or demolished as the facts may warrant.

- e. In any instance in which an order has been issued, pursuant to this section, that a building be secured with the order by securing the building, the mayor or the mayor's designee's case file shall, nevertheless, remain in effect for a period of three years from the date of signature of the order. The mayor may request that the city council reconvene the hearing if he receives evidence that the building has not remained secured and is in contravention of the order. Upon notice to the owner, lienholders, occupants and other persons having an interest in the property, the city council shall reconvene the hearing. If the city council finds that the building remains a dangerous building, notwithstanding efforts to secure it, the council may issue a revised order that the building be demolished.

(8) *Charges; lien.*

- a. The city council hereby finds and declares that the general administrative expenses of inspecting buildings, locating owners, conducting hearings, issuing notices and orders, together with all associated administrative functions, require the reasonable charge of \$500.00 for each lot, adjacent lots under common ownership or tract of land. Such minimum charge is hereby established and declared to be the charge for such administrative expenses to be assessed in each instance where the mayor determines that the building or structure is a dangerous building and the city is required to proceed with notice and hearing as provided for in this section. Notwithstanding any tabulation of recorded costs, a charge of \$500.00 is hereby expressly stated to be the minimum charge, unless otherwise determined by the mayor. Further, the cost of securing, repairing, demolishing the building or buildings, either by the city or by persons doing so under contract with the city, shall be separately calculated and assessed in each instance where the city demolishes or causes the demolition of a building or buildings pursuant to this article.
- b. The city shall certify all administrative expenses and costs of demolishing a building or buildings by the city or by persons doing so under contract with the city, as a charge which shall be assessed against the owner thereof, and which shall constitute a lien on the land on which the building or buildings are or were situated. Such charge shall bear interest at the rate of ten percent per annum until paid.
- c. If an order has been issued pursuant to this article for the repair or demolition of a building or buildings and the city has let a contract for demolition, and the building or buildings are subsequently repaired or demolished by the owners prior to completion of the contracts let by the city, the administrative expenses and all costs for cancellation of the contract shall be certified as a charge which shall be assessed against the owners thereof, and which shall constitute a lien on the land on which the building or buildings are or were situated. Such charge shall bear interest at the rate of ten percent per annum until paid.

(9) *Execution of release; notice of compliance.*

- a. Upon full payment of the charges assessed against any property, or in the event the lien is placed on the property through error, the mayor or the mayor's designee is hereby authorized to execute, for and in behalf of the city, a written release approved in each case by the city attorney.
- b. Upon compliance with an order of the city council to repair or demolish a building, the city attorney shall be and is hereby authorized to execute a written notice of compliance setting forth the date the notice of compliance is issued, the date the building was found to be repaired or demolished in compliance with the order; and if the building has not been demolished, whether or not the building is in such condition that it may be occupied.
- c. A fee shall be imposed for such release of lien provided hereunder as currently established or as hereafter adopted by resolution of the city council from time to time.

(10) *Violations.*

- a. The owner of any dangerous building who shall fail to comply with any order to repair, vacate, demolish or secure such building by any person authorized by this article to give such order shall be

guilty of a misdemeanor.

- b. The occupant or lessee in possession, who fails to comply with any order to vacate, and anyone having an interest in such building as shown by the deed records of the county clerk where the land is located, and under a legal duty to repair, who fails to repair or secure such building in accordance with any order given as provided for in this article, shall be guilty of a misdemeanor.
- c. Any person removing any notice provided in this article shall be guilty of a misdemeanor.
- d. The penalty upon conviction for violation of this section shall be as provided in this section.

(11) *Emergencies.*

- a. In cases where it reasonably appears that there is immediate danger to the health, life or safety of any person unless a dangerous building is immediately repaired, vacated, demolished or secured, the mayor or the mayor's designee shall report such facts to the city council. If the city council finds there is in fact an immediate danger to the health, life or safety of any person unless the building is immediately repaired, vacated, demolished or secured, he shall cause the immediate repair; vacation, demolition or securing of such building.
- b. Whenever the mayor or the mayor's designee causes a building to be repaired, vacated, demolished or secured pursuant to this section, he shall cause a notice, as described in this section, to be posted on the building.
- c. Whenever the mayor or the mayor's designee causes a building to be repaired, vacated, demolished or secured pursuant to this section, he shall also cause notice to be given that a hearing will be held concerning the orders issued in connection therewith, and whether the building constitutes a dangerous building. Such notice shall be given to the owners and lienholders of the building, all persons having possession of any portion thereof, and all other persons who may have an interest in the building. The notice shall set forth the specific conditions which render the building a dangerous building within the standards set forth in this section, the date, time and place of such hearing, that all persons having an interest in the building may appear in person and/or be represented by an attorney and may present testimony and may cross examine all witnesses. Such notice shall comply with the provisions set out in this section; however, the hearing shall be held as soon as it is reasonably possible, but in no case later than ten days, after the director has caused the building to be repaired, vacated, demolished or secured, unless all persons having either an ownership interest or a possessory interest in the building request a continuance of the hearing. All such hearings shall be held by the city council in accordance with the provisions of this section. At such a hearing, the burden shall be upon the city to show that there was an immediate danger to health, life or safety necessitating the immediate action and whether the building constitutes a dangerous building within the provisions of this article at the time of the hearing.
- d. After completion of the presentation of the testimony by all parties appearing, the city secretary or other person designated by the city council shall make written findings of fact as to whether or not the building was an immediate danger to health, life or safety necessitating the action taken by the mayor or the mayor's designee, and whether the building was a dangerous building within the provisions of this article. If the city council finds that there was an immediate danger to public health, life or safety that required the action that was taken, all administrative expenses and any cost of repair or demolition shall be calculated and assessed with the owners of the building, and shall constitute a lien on the land on which the building stands or stood, which shall bear interest as provided in this section. If the city council finds that the building, at the time of the hearing,

constitutes a dangerous building within the provisions of this article, the council shall issue an order for its abatement as set out in this section. The provisions of this section shall be applicable to any such order.

- (12) *Where owner absent from city.* In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the city, all notices or orders provided for herein shall be sent by registered mail or certified mail. Notices and/or orders shall be served on persons having an interest in the property, the owner, lienholder, or mortgagee for the property, as shown by the county real property records of the county where the land is located; appraisal district records of the appraisal district in which the building is located; records of the secretary of state; assumed name records of the county in which the building is located; tax records of the city; and utility records of the city to the owner, occupant, mortgagee, lessee and all other persons having an interest in any building coming under this article, as shown by the deed records of the county clerk where the land is located, to the last known address of each. A copy of such notice shall be posted in a conspicuous place on the dangerous building to which it relates. Such posting and mailing shall be deemed adequate service.
- (13) *Other remedies; V.T.C.A., Local Government Code chs. 54 and 214.*
- a. Nothing in this article shall preclude the city's pursuit of any and all other remedies allowed under the civil and criminal statutes, and in equity, to address conditions which are treated in this article, under the theory of public nuisance and abatement of dangerous structures or buildings. Neither shall the city be required, nor prohibited, to issue criminal citations before, after, or during any proceeding prescribed in this article.
 - b. Specifically, in addition to provisions of this article and remedies afforded under V.T.C.A., Local Government Code ch. 214, municipal regulation of structures, the city further asserts full authority to exercise its right to remedy under all provisions of V.T.C.A., Local Government Code, including, but not limited to, V.T.C.A., Local Government Code ch. 54, subchapter B (V.T.C.A., Local Government Code § 54.012 et seq.), municipal health and safety ordinances, in prosecution of civil suits for enforcement, injunctive relief, and civil penalties to remedy conditions of public concern described in this article.

(Ord. No. 2015-17, § 4.05, 9-15-2015)

Sec. 8-29. - Landscaping requirements.

- (a) *Purpose* . The purpose of this article is to preserve and enhance the natural beauty and character of the community. Protection of existing native trees and planting of desirable tree species will ensure that the character of our community remains intact.
- (b) *Requirements* . The following requirements shall become applicable to each individual lot at such time as an application for a building permit is made and shall remain in effect thereafter, changes in ownership notwithstanding. The mayor or the mayor's designee shall not issue a building permit unless the developer provides plans according to this section.
- (c) *Definitions* . The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Canopy tree means any self-supporting woody plant with one well defined trunk and a distinct and definite formed crown which attains a mature height of at least 30 feet such as: oaks, pecans, magnolias, loblolly pines, sycamore, bald cypress, and elm.

Caliper means a measurement in inches taken on the trunk of a tree that represents the diameter of the trunk. For trees under four inches in caliper this measurement is taken six inches above the crown of the root system. For trees over four inches in caliper this measurement is taken one inch above the crown.

Non-canopy tree means any self-supporting woody plant with one or more trunks which attains a height of at least 15 feet such as: redbuds, Bradford pears, crape myrtles, wax myrtles and yaupons.

Undesirable tree means any tree that is diseased or dead or any species not indigenous to our area or considered an invasive species such as: Chinese tallow, Sugar hackberry, huisache, mesquite, and China berry.

Procedures. Applications for building permits shall show both the required tree planting and the existing trees on the building site.

- (1) a. Existing trees must be located on a site plan with species and caliper size noted for all trees over four inches in caliper.
 - b. Note: Undesirable trees need not be noted or counted in the total caliper inches.
- (2) An explanation of how existing trees which are proposed to be retained from damage during construction will be protected and preserved.
- (3) A mayor shall inspect each site within 12 months of the issuance of the certificate of occupancy to ensure compliance of this article.
 - a. Building site requirements. All existing canopy trees within 20 inches of the building envelope shall be protected and preserved during the construction process. Any canopy trees within the building envelope that cannot be preserved shall be mitigated by planting a minimum of 40 percent of the caliper inches removed, unless the remaining total caliper inches exceeds 60 percent of the original total or 40 total inches, whichever is greater.
 - b. All building sites with no existing canopy trees shall require a minimum combined total of 24 caliper inches be planted on the building site. Of the total 24 caliper inches required, a minimum of 75 percent (18 inches) of caliper must be canopy trees, with the remaining 25 percent (six inches) being non-canopy trees.
 - c. All of the building sites must have a minimum combined total of ten caliper inches in the front of the building.

Note: Trees from the undesirable trees list will not be credited towards the total caliper inches.

(Ord. No. 2015-17, § 4.06, 9-15-2015)

Sec. 8-30. - Miscellaneous regulations.

- (a) *Height and area regulations.* The height of buildings, the maximum lot coverage shall be as follows:
 - (1) Single-family residences shall not exceed 2½ stories in height or 35 feet above the lowest area of living area the finished floor.
 - (2) Detached private garages and freestanding structures shall not exceed in height the roof peak of the single-family residence.
 - (3) Maximum lot coverage allowed for single-family residential lots is 50 percent.
 - (4) Commercial buildings shall not exceed 35 feet in height unless provided with a fire sprinkler system per section 903.3.1 of the International Building Code.
 - (5) Nonresidential lots shall have a minimum of ten percent of the total lot area devoted to landscaping. All open unpaved or uncovered space shall be devoted to landscaping.

- (6) Construction. No commercial building shall be erected within the city with:
- a. More than ten percent of any façade facing any street; or
 - b. More than 50 percent of any other façade of the building, being constructed of non-masonry material. The masonry exterior surface or veneer on all commercial buildings shall be masonry, fiber cement siding or concrete with masonry, concrete, wood, fiber cement or metal fascia and trim; provided, however, that exterior insulation finish system (EIFS) or other approved synthetic exterior stucco products may be used for exterior walls where no wood, wood by-products or wood compounds are used for sheathing or structural elements and a qualified third party inspection agency inspects and certifies in writing to the city that the installation performed according to the manufacturer's installation instructions.
 1. *Masonry* means that form of construction composed of stone, brick, concrete, hollow clay tile, decorative concrete block or tile, glass block or other similar building units or materials or a combination of these materials laid up unit by unit and set in mortar. For the purposes of this definition, true stucco is considered masonry.
 2. *Commercial building* means any building other than a single-family residence.

(b) *Fences.*

- (1) No fence shall be permitted in the front yard of a house which extends forward of the front of the house or of the building setback line whichever is greater, unless it is an open style fence, no greater than 60 inches in height, with minimum 50 percent open area, such as a chainlink, three-rail or similar fence.
- (2) Fences may not be erected and hedges may not be planted directly on a property line without the express agreement of the property owners on both sides of the property line.
- (3) Fences shall not exceed six feet in height, and shall be of a permanent type, such as chainlink, redwood, cedar, wrought iron, brick or other approved material of equal quality.
- (4) Fences for unimproved residential lots or acreage may use smooth or barbed wire or other open style fence no greater than 60 inches in height.
- (5) Refuse containers or similar equipment on nonresidential lots shall be screened from public view, and from adjacent buildings or property, whether public or private. Such screening shall be permanent and opaque and of wood, metal or masonry material and shall be at least as high as the screened object, but in no event shall be less than six feet in height.
- (6) The use of razor wire or any other similar material is not allowed.
- (7) Commercial fences exceeding six inches in height requires city council approval.

(Ord. No. 2015-17, § 4.07, 9-15-2015; Ord. No. 2015-18, § 1, 11-17-2015)

Sec. 8-31. - Other amendments or deletions.

- (a) Section 103, International Building Code (and all other adopted codes having this section), Department of Building Safety, is deleted in its entirety.
- (b) Section 113, International Building Code, board of appeals, is amended to reference the city council which will perform the functions of the board of appeals. Any reference to the board of appeals throughout all adopted ICC codes is hereby amended to refer to the city council instead.
- (c) Section 116, International Building Code, Unsafe Buildings and Equipment, is hereby deleted in its entirety.
- (d) Section 104.8, International Building Code, Liability, is hereby deleted in its entirety.

(Ord. No. 2015-17, § 4.08, 9-15-2015)

Sec. 8-32. - Enforcement and penalty for violation of article.

To the extent there is a conflict between this section and the International Building Code, this section shall control.

- (1) The mayor or the mayor's designee shall have the authority to issue citations for any violation of this article.
- (2) The owner of any building or premises or part thereof, where anything in violation of this article shall be placed or shall exist, and any architect, builder, contractor, agent or person in connection therewith and who may have assisted in the commission of any such violation shall be guilty of a separate offense and, upon conviction thereof, shall be fined as provided in this section.
- (3) In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any provisions of this article shall be deemed a public nuisance and may be abated by the city as provided by law.
- (4) The penalty for starting work prior to obtaining a valid permit, all fees will be doubled.
- (5) The imposition of a fine under this article shall not prevent the revocation, suspension or denial of any permit issued or granted by the city, nor shall it be deemed to prevent impede or delay the rights of the city to proceed in any other court of competent jurisdiction to secure equitable relief, including, but not limited to, injunctions or to file suits in the name of the city or as member of a class for damages or other relief as provided for by law.

(Ord. No. 2015-17, § 5, 9-15-2015)

Secs. 8-33—8-54. - Reserved.

ARTICLE III. - SWIMMING POOLS

Sec. 8-55. - Installation.

It shall be unlawful for any person to construct, install or enlarge a residential swimming pool not enclosed in a permanent building in the city except in accordance with the following regulations.

(Ord. No. 062105, § 1, 6-21-2005)

Sec. 8-56. - Definitions.

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

Swimming pool means any depression in the ground, either temporary or permanent, and either above or below the ground in which water of more than 24 inches (60.96cm) in depth is contained and which is used primarily for the purpose of bathing and swimming.

(Ord. No. 062105, § 2, 6-21-2005)

Sec. 8-57. - Construction requirements.

No pool shall be located, erected, constructed or maintained closer to any side or rear lot line than allowed by restriction or any ordinance for permitted accessory building uses, and in no case shall the water line of any pool be less than four feet (1.22 meters) from any lot line.

(Ord. No. 062105, § 4, 6-21-2005)

Secs. 8-58—8-117. - Reserved.

ARTICLE IV. - FLOOD DAMAGE PREVENTION^[2]

DIVISION 1. - GENERALLY

Sec. 8-118. - Statutory authorization.

The legislature of the state has in the Flood Control and Insurance Act, V.T.C.A., Water Code § 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the city council does ordain this article.

(Ord. No. 2014-03, art. 1, § A, 3-18-2014)

Sec. 8-119. - Findings of fact.

- (a) The flood hazard areas of 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.

(Ord. No. 2014-03, art. 1, § B, 3-18-2014)

Sec. 8-120. - Statement of purpose.

It is the purpose of this article 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 floodprone 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.

(Ord. No. 2014-03, art. 1, § C, 3-18-2014)

Sec. 8-121. - Methods of reducing flood losses.

In order to accomplish its purposes, this article 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 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.

(Ord. No. 2014-03, art. 1, § D, 3-18-2014)

Sec. 8-122. - Definitions.

The following words, terms and phrases, when used in this article, 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.

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 one 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 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 means 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 Zone 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 Zone 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 and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

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

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

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

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

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

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.

Floodplain or floodprone 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.

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.

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 ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

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

Levee means a 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 or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

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

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

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

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

Recreational vehicle means a vehicle which is:

- (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.

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

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

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

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

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

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

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. The term "substantial improvement" 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 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 ensure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

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

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

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 2014-03, art. 2, 3-18-2014)

Sec. 8-123. - Lands to which this article applies.

This article shall apply to all areas of special flood hazard with the jurisdiction of the city.

(Ord. No. 2014-03, art. 3, § A, 3-18-2014; Ord. No. 2016-05, § 2, 7-19-2016)

Sec. 8-124. - 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 Fort Bend County, Texas and Incorporated Areas," dated April 2, 2014, with accompanying flood insurance rate maps (FIRM) dated April 2, 2014, and any revisions thereto are hereby adopted by reference and declared to be a part of this article.

(Ord. No. 2014-03, art. 3, § B, 3-18-2014)

Sec. 8-125. - Establishment of development permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this article. It shall be unlawful for any person to commence new construction, substantial improvements, or another development within an area of special flood hazard within the jurisdiction of the city without having first received a development permit therefor issued in accordance with this article, to ensure conformance with the provisions of this article.

(Ord. No. 2014-03, art. 3, § C, 3-18-2014)

Sec. 8-126. - Compliance.

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

(Ord. No. 2014-03, art. 3, § D, 3-18-2014)

Sec. 8-127. - Abrogation and greater restrictions.

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

(Ord. No. 2014-03, art. 3, § E, 3-18-2014)

Sec. 8-128. - Interpretation.

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the city council; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 2014-03, art. 3, § F, 3-18-2014)

Sec. 8-129. - Warning and disclaimer of liability.

The degree of flood protection required by this article 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 article 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 article 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 article or any administrative decision lawfully made hereunder.

(Ord. No. 2014-03, art. 3, § G, 3-18-2014)

Secs. 8-130—8-156. - Reserved.

DIVISION 2. - ADMINISTRATION

Sec. 8-157. - Floodplain administrator—Designation.

The mayor of the city or his designee is hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance; National Flood Insurance Program regulations) pertaining to floodplain management.

(Ord. No. 2014-03, art. 4, § A, 3-18-2014)

Sec. 8-158. - Same—Duties and responsibilities.

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 article.
- (2) Review the permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this article.
- (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).
- (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) Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data has not been provided in accordance with section 8-124, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of division 3 of this article.
- (9)
 - a. When a regulatory floodway has not been designated, require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
 - b. Under the provisions of 44 CFR 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 one foot, provided that the community first completes all of the provisions required by 44 CFR 65.12.

(Ord. No. 2014-03, art. 4, § B, 3-18-2014)

Sec. 8-159. - Permit procedures.

- (a) Application for a floodplain 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, 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:

- (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 floodproofed. The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures shall be a minimum of 12 inches above the base flood elevation as established by the latest FIS and FIRM;
 - (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of section 8-190(1)(b);
 - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
 - (5) Maintain a record of all such information in accordance with section 8-158(1).
- (b) 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;
 - (10) The relationship of the proposed use to the comprehensive plan for that area; and
 - (11) The impact to adjacent and neighboring properties, as it relates to drainage and flood damage potential, reasonably expected as a result of the proposed development.

(Ord. No. 2014-03, art. 4, § C, 3-18-2014)

Sec. 8-160. - Variance procedures.

- (a) The appeal board shall be current city councilmembers to hear and render judgment on requests for variances from the requirements of this article.
- (b) The appeal board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.
- (c) Any person aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.
- (d) 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.

- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this article.
- (f) 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 8-159(b) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted above and the intent of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article (section 8-120).
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) 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.
- (j) Prerequisites for granting variances.
 - (1) Variances shall only be issued upon:
 - a. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
 - b. Showing a good and sufficient cause;
 - c. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - d. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
 - (2) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (k) 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)—(i) of this section 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.

(Ord. No. 2014-03, art. 4, § D, 3-18-2014)

Secs. 8-161—8-188. - Reserved.

DIVISION 3. - FLOOD HAZARD REDUCTIONS STANDARDS

Sec. 8-189. - 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 or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, 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 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 discharge from the systems into floodwaters; and
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. No. 2014-03, art. 5, § A, 3-18-2014)

Sec. 8-190. - Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in section 8-124, 8-158(8) or 8-191(3), the following provisions are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to a minimum of 12 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 8-159(a)(1), is satisfied.
- (2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to a minimum of 12 inches above the base flood elevation or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the floodplain administrator.
- (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood

forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings on separate walls having a total net area of not less than 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 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 are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites:
 1. Outside of a manufactured home park or subdivision;
 2. In a new manufactured home park or subdivision;
 3. In an expansion to an existing manufactured home park or subdivision; or
 4. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of 12 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)b.4 of this section be elevated so that either:
 1. The lowest floor of the manufactured home is a minimum of 12 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:

- 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 section 8-159(a), and the elevation and anchoring requirements for manufactured homes in subsection (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Sec. 8-191. - Standards for subdivision proposals.

- (a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with sections 8-118 through 8-120.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet floodplain development permit requirements of sections 8-125 and 8-159, and the provisions of this division 3.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to section 8-124 or 8-158(8).
- (d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) 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.

(Ord. No. 2014-03, art. 5, § C, 3-18-2014)

Sec. 8-192. - Standards for areas of shallow flooding (AO/AH Zones).

Located within the areas of special flood hazard established in section 8-158 are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three 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 a minimum of 12 inches 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 two feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures:
 - a. Have the lowest floor (including basement) elevated a minimum of 12 inches 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 two feet if no depth number is specified); or
 - b. Together with attendant utility and sanitary facilities, be designed so that below the base specified flood depth in an AO Zone, or below the base flood elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in section 8-159 are satisfied.
- (4) Require within Zone AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 2014-03, art. 5, § D, 3-18-2014)

Sec. 8-193. - Floodways.

Located within areas of special flood hazard established in section 8-124 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters 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 (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this division 3.
- (3) Under the provisions of 44 CFR 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 44 CFR 65.12.

(Ord. No. 2014-03, art. 5, § E, 3-18-2014)