



**FLOOD DAMAGE  
PREVENTION ORDER**  
McLennan County, Texas

**SEPTEMBER 23, 2008**

# FLOOD DAMAGE PREVENTION ORDER

McLennan County, Texas

## TABLE OF CONTENTS

ARTICLE 1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS .....	1
SECTION A. <u>STATUTORY AUTHORIZATION</u> .....	1
SECTION B. <u>FINDINGS OF FACT</u> .....	1
SECTION C. <u>STATEMENT OF PURPOSE</u> .....	1
SECTION D. <u>METHODS OF REDUCING FLOOD LOSSES</u> .....	2
ARTICLE 2 DEFINITIONS.....	2
ARTICLE 3 GENERAL PROVISIONS .....	8
SECTION A. <u>LANDS TO WHICH THIS ORDER APPLIES</u> .....	8
SECTION B. <u>BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD</u> .....	8
SECTION C. <u>ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT</u> .....	8
SECTION D. <u>COMPLIANCE</u> .....	8
SECTION E. <u>ABROGATION AND GREATER RESTRICTIONS</u> .....	8
SECTION F. <u>INTERPRETATION</u> .....	8
SECTION G. <u>WARNING AND DISCLAIMER OF LIABILITY</u> .....	9
ARTICLE 4 ADMINISTRATION.....	9
SECTION A. <u>DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR</u> .....	9
SECTION B. <u>DUTIES &amp; RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR</u> .....	9
SECTION C. <u>PERMIT PROCEDURES</u> .....	10
SECTION D. <u>COLLECTION OF FEES</u> .....	11
SECTION E. <u>VARIANCE PROCEDURES</u> .....	11
ARTICLE 5 PROVISIONS FOR FLOOD HAZARD REDUCTION .....	13
SECTION A. <u>GENERAL STANDARDS</u> .....	13
SECTION B. <u>SPECIFIC STANDARDS</u> .....	14
SECTION C. <u>STANDARDS FOR SUBDIVISION PROPOSALS</u> .....	16
SECTION D. <u>STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)</u> .....	16
SECTION E. <u>FLOODWAYS</u> .....	17
ARTICLE 6 PENALTY, ENFORCEMENT, AND SEVERABILITY .....	17
SECTION A. <u>PENALTY</u> .....	17
SECTION B. <u>ENFORCEMENT</u> .....	17
SECTION C. <u>SEVERABILITY</u> .....	18
CERTIFICATION.....	19
FLOODPLAIN DEVELOPMENT PERMIT	
FLOODPLAIN DEVELOPMENT PERMIT FEE SCHEDULE	

# FLOOD DAMAGE PREVENTION ORDER

## ARTICLE 1

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

#### SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of Texas has in Subchapter I, Sections 16.313, 16.315 and 16.318 of the Texas Water Code delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Commissioners Court of McLennan County, Texas, does ordain as follows:

#### SECTION B. FINDINGS OF FACT

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

#### SECTION C. STATEMENT OF PURPOSE

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

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

SECTION D. METHODS OF REDUCING FLOOD LOSSES

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

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

ARTICLE 2

DEFINITIONS

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

APPEAL - means a request for a review of the Floodplain Administrator's interpretation of any provision of this Order or a request for a variance.

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

AREA OF SHALLOW FLOODING - means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance 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 - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

BASE FLOOD ELEVATION – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-30, AR, V1-V30, VE, or through other sources of flooding as defined by the use of best available data that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year – also called the Base Flood.

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

BASEMENT – means any area of a building having its floor subgrade (below ground level) on all sides.

BEST AVAILABLE DATA – most recent or most accurate hydraulic and hydrologic information that show areas with a 1% chance of flooding in a given year. This includes, but is not limited to, Flood Insurance Studies (FIS) and accompanying Flood Insurance Rate Maps (FIRM) and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM), inundation levels of United State Soil Conservation Reservoirs, and areas of errors or omissions within the current FIRM.

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

DEVELOPMENT - means any man-made change in 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 a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, “elevated building” also includes a building otherwise meeting the definition of “elevated building”, even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.

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

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

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

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

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

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

FLOOD INSURANCE STUDY – is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

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

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

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

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

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

FLOODWAY (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.

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

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

HISTORIC STRUCTURE - means any structure that is:

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

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

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

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

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

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

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

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

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

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

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

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, 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.

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

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 repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

VARIANCE – is a grant of relief to a person from the requirements of this Order when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Order. (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 a floodplain development permit, elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

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

ARTICLE 3

GENERAL PROVISIONS

SECTION A.           LANDS TO WHICH THIS ORDER APPLIES

This order shall apply to all areas of special flood hazard within the jurisdiction of McLennan County.

SECTION B.           BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study for McLennan County, Unincorporated Areas," dated September 26, 2008, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Order.

McLennan County recognizes that the FIS and accompanying FIRM and FBHM may not identify all special flood hazard areas, and such areas may be expanded at the discretion of the Floodplain Administrator through the use of best available data.

SECTION C.           ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT

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

SECTION D.           COMPLIANCE

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

SECTION E.           ABROGATION AND GREATER RESTRICTIONS

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

SECTION F.           INTERPRETATION

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

SECTION G.            WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this Order is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Order 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 Order shall not create liability on the part of the County or any official or employee thereof for any flood damages that result from reliance on this Order or any administrative decision lawfully made thereunder.

ARTICLE 4

ADMINISTRATION

SECTION A.            DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The County Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Order and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

SECTION B.            DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

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

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this Order.
- (2) Review permit applications to determine whether proposed building sites, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by the adoption of this Order.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions and/or other best available data) the Floodplain Administrator shall make the necessary interpretation.

- (6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Texas Water Development Board (TWDB), prior to any alteration or relocations of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7) Verify that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data have not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.
- (9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) 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 (1) foot at any point within the community.

#### SECTION C. PERMIT PROCEDURES

- (1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may require provision of information by the Applicant, including but not limited to: plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures (including the placement of manufactured homes), and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
  - (a) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
  - (b) Elevation (in relation to mean sea level) to which any nonresidential structure shall be floodproofed;
  - (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B(2);
  - (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of the proposed development.
- (2) Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this Order and the following relevant factors:

- (a) Danger to life and property due to flooding or erosion damage;
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (c) The danger that materials may be swept onto other lands to the injury of others;
- (d) The compatibility of the proposed use with existing and anticipated development;
- (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (g) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (j) The relationship of the proposed use to the comprehensive plan for that area.

SECTION D. COLLECTION OF FEES

To help defray the reasonable costs of administering the requirements of this Order, the Floodplain Administrator shall require fees to be paid in accordance with the schedule established from time to time by the Commissioners Court. Such fees shall be paid with the filing of an application for a Floodplain Development Permit. No such permit shall be issued until the fees are received. All fees shall be made payable to McLennan County in the form of cash, personal check, business/corporate check, cashier's check, or money order. Fees will not be refundable.

SECTION E. VARIANCE PROCEDURES

- (1) Any person aggrieved by an action, decision or determination of the Floodplain Administrator made in the enforcement or administration of this Order may, within fifteen (15) days of the date of the document giving notice of the denied action, decision or determination, file a written appeal to the Commissioners Court.
- (2) The appeal shall be initiated by filing an original and six (6) copies of the written objection with the County Judge. The written objection shall state what the complainant believes the action, decision or determination of the Floodplain Administrator should have been and the reasons therefore. A copy of the denied permit shall be incorporated as an attachment to the written objection.

- (3) When a written objection is received, the County Judge shall place the matter on the Agenda of the Commissioners Court for review at the next meeting of the Commissioners Court, that is at least ten (10) days after the date of the filing of the objection. The County Judge shall forward a copy of the objection to the Floodplain Administrator and send written notification to the complainant of the date, time and location that the appeal will be considered by the Commissioners Court.
- (4) At the hearing, the Commissioners Court shall review the matter and consider such information and evidence that the Commissioners Court may deem relevant and that may be offered by the Floodplain Administrator or the complainant. The Commissioners Court shall, within 30 days from the hearing date, either affirm, reverse, or modify the action, decision or determination of the Floodplain Administrator and provide written notice of same to complainant.
- (5) Any person or persons aggrieved by the decision of the Commissioners Court may appeal such decision to a court of competent jurisdiction in the State of Texas.
- (6) 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.
- (7) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Order.
- (8) 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, provided that the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half acre size, the technical justification required for issuing the variance increases.
- (9) Upon consideration of the factors noted above and the intent of this Order, the Commissioners Court may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Order (Article 1, Section C).
- (10) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (11) Prerequisites for granting variances:
- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (b) Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or orders.
  - (c) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (12) Variances may be issued by the County for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article 4, Section D (1)–(11) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## ARTICLE 5

### PROVISIONS FOR FLOOD HAZARD REDUCTION

#### SECTION A. GENERAL STANDARDS

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

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

SECTION B. SPECIFIC STANDARDS

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

- (1) Residential Construction – new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to one (1) foot 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 Order is satisfied.
- (2) Nonresidential Construction – new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one (1) foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review the 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, shall be installed using methods and practices which minimize flood damage. For the purpose 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) All manufactured homes shall be in compliance with Article 5, Section B (1).
  - (c) Require that all manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE on the community’s FIRM be elevated on a permanent foundation such that the lowest floor of the manufactured home is at one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provision of (4)(a) of this Section.
- (5) Recreational Vehicles – Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community’s FIRM either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Article 4, Section C (1), and the elevation and anchoring requirements for “manufactured homes” in (4)(a) of this Section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

SECTION C.            STANDARDS FOR SUBDIVISION PROPOSALS

- (1) All subdivision proposals including manufactured home parks or subdivisions shall be consistent with Article 1, Sections B, C, and D of this Order.
- (2) All proposals for the development of subdivisions including manufactured home parks or subdivisions shall meet the requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this Order.
- (3) Base flood elevation data shall be generated for proposed subdivisions and other proposed developments including manufactured home parks or subdivisions which are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B (8) of this Order.
- (4) All proposed subdivisions including manufactured home parks or subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) All proposed subdivisions including manufactured home parks or subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

SECTION D.            STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)

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

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above 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;
  - (i) Have the lowest floor (including basement) elevated above 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;
  - (ii) 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, including the effects of buoyancy.

- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes in order to guide flood waters around and away from proposed structures.

SECTION E. FLOODWAYS

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

- (1) Encroachments, including but not limited to fill, new construction, and substantial improvements, are prohibited 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 and is not prohibited by (2) below.
- (2) Encroachments by residential structures, commercial structures, and outbuildings are strictly prohibited.
- (3) If Article 5, Section E (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

ARTICLE 6

PENALTY, ENFORCEMENT, AND SEVERABILITY

SECTION A. PENALTY

A person commits an offense if the person violates any provision of this Order. An offense under this provision is a class C misdemeanor. Each day of violation shall constitute a separate offense.

SECTION B. ENFORCEMENT

If it appears that a person has violated, is violating, or is threatening to violate any provision of this Order, the Commissioners Court of McLennan County may institute a civil suit in the appropriate court for:

- (1) Injunctive relief to restrain the person from continuing the violation or threat of violation, including an order directing the person to remove illegal improvements and restore pre-existing conditions;
- (2) The assessment and recovery of the civil penalty provided by Section 16.322, Texas Water Code; or
- (3) Both the injunctive relief and the civil penalty, as listed above.

SECTION C.            SEVERABILITY

In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Order or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Order as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the Commissioners Court of McLennan County declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.