

ORDINANCE 2018- 107

AN ORDINANCE OF THE CITY OF KENEFICK, TEXAS, ADOPTING FLOOD PLAIN MANAGEMENT AND ENFORCEMENT RULES AND REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council of the City of Kenefick, Texas, ("City") finds that updating the flood plain management rules and regulations are in the best interest of the City are promote the health, safety, and general welfare of the City; and

WHEREAS, the City Council further finds that such rules and regulations will minimize flood losses;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KENEFICK, TEXAS:

FLOOD DAMAGE PREVENTION

DIVISION 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

Section 1: Statutory authorization.

The Legislature of the State of Texas has, in V.T.C.A., Texas Water Code §§ 16.311 et seq., delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the city council, does ordain as set out in the following sections.

Section 2: Findings of fact.

(a) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage.

Section 3: Statement of purpose.

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

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

Section 4: Methods of reducing flood losses.

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

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

DIVISION 2. DEFINITIONS.

Section 5. Definitions.

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

- (1) *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.

(2) *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.

(3) *Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.

(4) *Appurtenant structure* means a structure that 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.

(5) *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.

(6) *Area of shallow flooding* means a designated AO, AH, AR/AO, AR/AH or VO zone, as applicable, 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.

(7) *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 ratemaking has been completed in preparation for the publication of the FIRM, zone A usually is refined into zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V, V, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, or AR/A.

(8) *Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year.

(9) *Basement* means any area of the building having its floor subgrade (below ground level) on all sides.

(10) *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.

(11) *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.

(12) *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.

(13) *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 members of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor 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, 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 floodwaters. 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.

(14) *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."

(15) *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.

(16) *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).

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

- a. The overflow of inland or tidal waters;
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

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

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

(20) *Flood insurance study (FIS)* 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.

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

(22) *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.

(23) *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), as applicable, 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.

(24) *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.

(25) *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. The specialized flood modifying works are those constructed in conformance with sound engineering standards.

(26) *Floodway (regulatory floodway)* means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood

without cumulatively increasing the water surface elevation more than a designated height.

(27) *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.

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

(29) *Historic structure* means any structure that is:

- (a) 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;
- (b) 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;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (d) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

(30) *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.

(31) *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.

(32) *Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking vehicles, building access or storage in an area other than the 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. For residential structures without a basement, the lowest floor elevation shall be measured as follows: a) for concrete slab construction, the lowest floor elevation shall be measured by the surface of the lowest point on the exterior perimeter of the slab, excluding any ledges solely for the purpose of attaching a facade; and b) for crawl space (pier and beam) construction, the lowest floor elevation shall be measured by the top of the wood sub-flooring. For residential structures with a basement, the lowest floor elevation shall be measured by the top surface of the basement floor at the lowest point. For the purpose of this regulation, wine cellars and elevator pits are regarded as basements.

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

(34) *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.

(35) *Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

(36) *New construction* means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.

(37) *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.

(38) *Recreational vehicle* means a vehicle which is:

- (i) Built on a single chassis;
- (ii) Four hundred (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.

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

(40) *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, 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 of streets and/or walkways; nor does it include excavation for basement, 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.

(41) *Structure* means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

(42) *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.

(43) *Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary 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.'

(44) *Variance* is a grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance.

(For full requirements, see Section 60.6 of the National Flood Insurance Program regulations.)

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

(46) *Water surface elevation* means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

DIVISION 3. GENERAL PROVISIONS.

Section 6. Lands to which this ordinance applies.

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

Section 7. 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 flood insurance rate map and/or flood boundary-floodway maps for Liberty County, Texas, and any other map as promulgated by FEMA for Liberty County or the City and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

Section 8. Establishment of development permit.

A development permit shall be required in the floodplain to ensure conformance with the provisions of this ordinance.

Section 9. Compliance.

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

Section 10. Abrogation and greater restrictions.

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

Section 11. Interpretation.