

ARTICLE 13

“F-W” FLOODWAY AND “F-P” FLOOD PLAIN DISTRICTS

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SECTION 13-1 INTENT OF F-W FLOODWAY DISTRICT

13-101.

- a. It is the purpose of this Article to promote the public health, safety and general welfare and to minimize loss of life and property in those areas subject to inundation as the result of flooding. These flood losses are caused by: (1) the cumulative effect of obstruction in flood plains causing increases in flood heights and velocities; (2) the occupancy of flood hazard areas by uses vulnerable to flood or hazardous to other lands which are inadequately elevated or otherwise protected from flood damages.
- b. The provision of regulations in this district restrict or prohibit uses which are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities; require that uses vulnerable to floods, including public facilities which serve such uses, shall be protected against flood damage at the time of initial construction; and protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- c. This zoning district is an overlay district. All of the requirements contained in this Article shall govern if more restrictive than those of the underlying zoning district. These zones shall be consistent with the numbered and unnumbered A Zones (including AE, AO and AH zones) as identified on the official Flood Insurance Rate Map of November 02, 2007 and identified in the Flood Insurance Study dated December 26, 1975 provided by the Federal Emergency Management Agency. (Amended by Ord 1355 10/17/07)

13-101.2 In all areas of special flood hazard, once floodway data is obtained, the following provisions are required:

- a. The designated floodway shall be based on the standard that the area chosen for the floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation more than one (1) foot at any point; and
- b. The community shall prohibit any encroachments, including fill, new construction, substantial-improvements, and other development within the designated 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.

SECTION 13-2 DISTRICT REGULATIONS

13-201. In District “F-W,” only uses having a low flood damage potential and not obstructing flood flows shall be permitted to the extent that they are not prohibited by any other city law and provided that they do not require structures, fill or storage of materials or equipment.

SECTION 13-3 USE REGULATIONS

13-301. Only the following uses shall be permitted if also permitted in the underlying zoning district.

- a. Agriculture uses such as pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
- b. Private and public recreational uses; archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, golf courses, wildlife and nature preserves, game farms, hunting and fishing areas, hiking and horseback riding trails.
- c. Residential lawns, gardens, play areas and parking areas, except that structures and fences are not permitted.
- d. Non-residential areas such as loading areas, parking and airport landing strips.

SECTION 13-4 WARNING AND DISCLAIMER OF LIABILITY

13-401. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and the delineation of the “F-W” District is based on diagrams and maps in the Flood Insurance Study provided by the Flood Emergency Management Agency. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Article does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Article shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

13-401.1 Abrogation and Greater Restrictions. It is not intended by this section or any ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section or ordinance imposes greater restrictions, the provisions of this section or ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

“F-P” FLOOD PLAIN DISTRICT

SECTION 13-5 INTENT OF F-P FLOOD PLAIN DISTRICT

13-501.

- a. The “F-P” Flood Plain District is established to promote the public health, safety, and general welfare and to minimize the loss of life and property in those areas subject to inundation as the result of flooding. This district is an overlay district in that it overlaps other zoning district classifications. The requirements of both the “F-P” district and those of the underlying zoning district shall apply to those areas zoned “F-P,” however, where these regulations conflict, the most restrictive requirements shall take precedence.
- b. The “F-P” district shall be that area defined as floodway fringe and as identified on the official Flood Insurance Rate Map of November 02, 2007 and identified in the Flood Insurance Study dated December 26, 1975 provided by the Federal Emergency Management Agency (Amended Ord 1355 10/17/07)

SECTION 13-6 DISTRICT REGULATIONS

13-601. In district “F-P,” no building or land shall be used, and no building or structure shall be erected, altered or enlarged other than in accordance with the regulations below.

SECTION 13-7 USE REGULATIONS

13-701. Uses permitted in the underlying zoning districts shall also be permitted in the “F-P” Flood Plain District in accordance with these regulations. Uses permitted as special uses in the underlying zoning districts shall also be permitted as special uses in the “F-P” Flood Plain District.

SECTION 13-8 STANDARDS FOR THE F-P (FLOODWAY FRINGE) OVERLAY DISTRICT

13-801.

- a. Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated one foot above the base flood elevation.
- b. Require new construction or substantial improvements of nonresidential structures to have the lowest floor, including basement, elevated one foot above the base flood elevation or, together with attendant utility and sanitary features, to be flood proofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 13-9.
- c. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. 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 minimum of two openings 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. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- d. Within AH zones, adequate drainage paths around structures on slopes shall be required in order to guide floodwater around and away from proposed structures.

- e. **Manufactured Homes:**
1. All manufactured homes to be placed within special flood hazard areas shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes shall be elevated and anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. In the event that over-the-top frame ties to the ground anchors are used, the following specific requirements (or their equivalent) shall be met:
 - (a) over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;
 - (b) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
 - (c) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 - (d) any additions to the manufactured home be similarly anchored.
 2. Require that all manufactured homes be placed 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 one foot above the base flood elevation; and be securely anchored to an adequate foundation system in accordance with the provisions of paragraph e.1. above.
 3. Require manufactured homes that are placed or substantially improved within unnumbered A zones on the community's FIRM or FHBM on sites:
 - (a) Outside of a manufactured home park or subdivision;
 - (b) In a new manufactured home park or subdivision;
 - (c) In an expansion to an existing manufactured home park or subdivision; or
 - (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial-damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of one (1) foot above the base flood level and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor.

4. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within unnumbered A zones on the community's FIRM or FHBM that are not subject to the provisions of Section 13-801, e 3, of this article, be elevated so that either:
 - (a) The lowest floor of the manufactured home is a minimum of one (1) foot above the base flood level; or
 - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor.

- f. No permit for development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all numbered and unnumbered A zones (including AE, AO and AH zones) unless the conditions of this section are satisfied.

- g. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of this Article. If Flood Insurance Study data is not available, the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources.

- h. New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
 1. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 2. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from these systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
 3. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and 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.

4. All utility and sanitary facilities be elevated or flood proofed up to the regulatory flood protection elevation.
 5. That until a floodway has been designated, no development, including landfill, may be permitted within Zones A1-30 and AE on the City's FIRM unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one (1) foot on the average cross section of the reach in which the development or landfill is located as shown on the Flood Insurance Rate Study.
 6. Storage and Materials Equipment:
 - (a) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
 - (b) Storage of other materials or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
 7. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that (a) all such proposals are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood hazards, and (d) proposals for development (including proposals for manufactured home parks and subdivisions), of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the regulatory flood elevation.
- i. **RECREATIONAL VEHICLES:** Require that recreational vehicles placed on sites within unnumbered A zones on the community's FIRM or FHBM either:
1. Be on the site for fewer than 180 consecutive days, or
 2. Be fully licensed and ready for highway use*; or
 3. Meet the permitting, elevating, and the anchoring requirements for manufactured homes 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 13-9 PERMITS

13-901. No person, firm or corporation shall erect, construct, enlarge or improve any land, building or structure in the F-P or F-W district or cause the same to be done without first obtaining a separate development permit for each such building or structure. The building inspector shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding, if the proposed development conforms to all the provisions of these regulations, and that all necessary permits have been received as required by federal or state law. In reviewing each such application, the building inspector shall:

- a. Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this Article have been satisfied.
- b. Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- c. Notify adjacent communities and the Kansas State Water Board prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Emergency Management Agency.
- d. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- e. Verify, record and maintain records of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
- f. Verify, record and maintain records of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed.
- g. When flood proofing is utilized for a particular structure, the building inspector shall be presented certification from a registered professional engineer or architect.

SECTION 13-10 APPLICATION FOR PERMIT

13-1001. To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

- a. Identify and describe the work to be covered by the permit.
- b. Describe the land on which the proposed work is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
- c. Indicate the use or occupancy for which the proposed work is intended.
- d. Be accompanied by plans and specification for proposed construction.
- e. Be signed by permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.
- f. Give such other information as reasonably may be required by the building inspector.

SECTION 13-11 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

- a. Establishment of Appeal Board
 1. The La Cygne Zoning Appeals Board, as established by the City of La Cygne, Kansas shall hear and decide appeals and requests for variances from the floodplain management requirements of this article.
- b. Responsibility of Appeal Board
 1. Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Section 13-11, a, 1.
 2. The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.

c. Further Appeals:

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court of the County as provided in K.S.A. 12-759 and 12-760.

d. Floodplain Management Variance Criteria:

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

e. Conditions for approving floodplain management variances

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provided the proposed activity will not preclude the structure's continued historic designation.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) 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.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this article.

SECTION 13-12 DEFINITIONS

13-1101. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

Actuarial or risk premium rates means those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. "*Risk premium rates*" include provisions for operating costs and allowances.

Alluvial fan means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

Apex means the point of highest elevation on an alluvial fan, which on undisturbed fans is generally the point where the major stream that formed the fan emerges from the mountain front.

Area of shallow flooding means a designated AO or AH 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 is unpredictable and where velocity flow may be evident. Such flooding is characterized by pending or sheet flow.

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

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

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 FIRM's 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:

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

Flood Insurance Rate Map (FIRM) means any official map of a community, on which the Flood Insurance Study has delineated the Flood Insurance Hazard Boundaries and the zones establishing insurance rates applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Floodway or ***Regulatory floodway*** means the channel of a river or other water course 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 one foot.

Floodway Fringe is that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once in every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

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

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:

- (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 the Interior;
or
- (d) Individually listed on a local inventory of 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.

New construction means, for the purposes 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 flood plain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a flood plain management regulation adopted by a community and includes any subsequent improvements to such structures.

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 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 state 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 a 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.

Overlay district is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

Recreational vehicle means a vehicle which is:

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

Structure means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank 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 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 the “start of construction” of the improvement. This term includes structures which have incurred “*substantial damage*,” regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”