

CHAPTER XVI. ZONING AND PLANNING

- Article 1. City Planning Commission/
Board of Zoning Appeals
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**ARTICLE 1. CITY PLANNING COMMISSION/
BOARD OF ZONING APPEALS**

- 16-101. COMMISSION RE-ESTABLISHMENT. There is hereby established the Pawnee Rock City Planning Commission which is composed of seven members of which five members shall be residents of the city and two members shall reside outside the city, but within the designated planning area of the city which is within at least three miles of the corporate limits of the city. (Code 2011)
- 16-102. MEMBERSHIP, TERMS, INTEREST AND COMPENSATION. The members of the planning commission shall be appointed by the mayor with the consent of the governing body at the first regular meeting of the governing body in May of each year and take office at the next regular meeting of the commission. All members shall be appointed for staggered terms of three years each. The appointments shall be so made that the terms of office of the members residing outside of the corporate limits of the city do not expire within the same year. By the reestablishment of the commission, all current members continue to serve their present terms of office. In case of death, incapacity, resignation or disqualification of any member, appointment to such a vacancy on the commission shall be made of the unexpired term of the member leaving the membership. Should any member have a conflict of interest, either directly or indirectly, in any matter coming before the commission, he or she shall be disqualified to discuss or vote on the matter. The governing body may adopt rules and regulations providing for removal of members of the commission. Members of the commission shall serve without compensation, but may be reimbursed for expenses actually incurred in the performance of their duties as deemed desirable by the governing body. (Code 2011)
- 16-103. MEETINGS, OFFICERS AND RECORDS. The members of the planning commission shall meet at such time and place as may be fixed in the commission's bylaws. The commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successors have been elected. A secretary shall also be elected who may or may not be a member of the commission. Special meetings may be called at any time by the chairperson or in the chairperson's absence by the vice-chairperson. The commission shall adopt bylaws for the transaction of business and hearing procedures. All actions by the commission shall be taken by a majority vote of the entire membership of the commission; except that, a majority of the members present and voting at the hearing shall be required to recommend approval or denial of an amendment to the

zoning regulations, a rezoning amendment or a special use permit. A proper record of all the proceedings of the commission shall be kept. The commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the commission. (Code 2011)

16-104. POWERS AND DUTIES. The governing body and planning commission shall have all the rights, powers and duties as authorized in K.S.A. 12-741 et seq., and amendments thereto, which are hereby incorporated by reference as part of this section and shall be given full force and effect as if the same had been fully set forth. The commission is hereby authorized to make or cause to be made, adopted and maintained a comprehensive plan for the city and any unincorporated territory lying outside of the city but within Barton County in which the city is located, which in the opinion of the commission forms the total community of which the city is a part. The commission shall also cause to be prepared, adopted and maintained zoning and subdivision regulations on all land within the jurisdiction designated by the governing body. The comprehensive plan and zoning and subdivision regulations are subject to final approval of the governing body by ordinance. Periodically, the governing body may request the commission to undertake other assignments related to planning and land use regulations. (Code 2011)

16-105. BOARD OF ZONING APPEALS. The planning commission is hereby designated to also serve as the city's board of zoning appeals with all the powers and duties as provided for in K.S.A. 12-759. The board shall adopt rules in the form of bylaws for its operation which shall include hearing procedures. Such bylaws shall be subject to the approval of the governing body. Public records shall be kept of all official actions of the board which shall be maintained separately from those of the commission. The board shall keep minutes of its proceedings showing presented evidence, findings of fact, decisions, and the vote upon each question or appeal. A majority of the members of the board present and voting at the hearing shall be required to decide any appeal. Subject to subsequent approval of the governing body, the board shall establish a scale of reasonable fees to be paid in advance by the appealing party. The present membership of the board of zoning appeals shall be disbanded effective December 31, 2010. (Code 2011)

16-106. BUDGET. The governing body shall approve a budget for the planning commission and make such allowances to the commission as it deems proper, including funds for the employment of such employees or consultants as the governing body may authorize and provide, and shall add the same to the general budget. Prior to the time that moneys are available under the budget, the governing body may appropriate moneys for such purposes from the general fund. The governing body may enter into such contracts as it deems necessary and may receive and expend funds and moneys from the state or federal government or from any other resource for such purposes. (Code 2011)

ARTICLE 2. ZONING REGULATIONS

16-201. ZONING REGULATIONS INCORPORATED. (Reserved).

ARTICLE 3. SUBDIVISION REGULATIONS

16-301.

REGULATIONS INCORPORATED. There are hereby incorporated by reference, as if set out fully herein, certain regulations governing the subdivision of land located within the City of Pawnee Rock, Kansas and certain surrounding area as described therein, as adopted by the governing body of the City of Pawnee Rock, Kansas and prepared by Pawnee Rock City Planning Commission. No fewer than three copies of the subdivision regulations marked "Official Copy as incorporated by the Code of the City of Pawnee Rock" and to which there shall be a published copy of this section attached, shall be filed with the city clerk to be open for inspection and available to the public at all reasonable hours. (Code 2011)

ARTICLE 4. FLOOD PLAIN MANAGEMENT

- 16-401. STATUTORY AUTHORIZATION. The legislature of the State of Kansas has in its constitution delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the health, safety and general welfare. Therefore, the city council of Pawnee Rock, Kansas ordains as follows: (Ord. 60.3C; 315; 316; Code 2011)
- 16-402. FINDINGS OF FACT. (a) Flood Losses Resulting from Periodic Inundation. The flood hazard areas of Pawnee Rock, Kansas are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.
- (b) General Causes of these Flood Losses. These flood losses are caused by (1) the cumulative effect of obstructions in floodways causing increases in flood heights and velocities, (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, inadequately elevated or otherwise unprotected from flood damages.
- (c) Methods Used to Analyze Flood Hazards. The Flood Insurance Study (FIS) that is the basis of this article uses a standard engineering method of analyzing flood hazards, which consists of a series of interrelated steps.
- (1) Selection of base flood is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The regulatory flood selected for this article is representative of large floods, which are reasonably characteristic of what can be expected to occur on the particular streams subject to this article. It is the general order of a flood which could be expected to have a one percent chance of occurrence in any one year, as delineated on the Federal Insurance Administration's FIS, and illustrative materials dated August 4, 1988, as amended, and any future revisions thereto.
- (2) Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and over-bank areas to convey the regulatory flood.
- (3) Computation of a floodway required to convey this flood without increasing flood heights more than one foot at any point.
- (4) Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.
- (5) Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood. (Ord. 315; Code 2011)
- 16-403. STATEMENT OF PURPOSE. It is the purpose of this article to promote the public health, safety, and general welfare; to minimize those losses described in section 16-402(a); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(c) by applying the provisions of this article to:
- (a) Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;

(b) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction; and,

(c) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
(Ord. 60.3C; Ord. 315, Code 2011)

Section 2. General Provisions

- 16-404. **LANDS TO WHICH ARTICLE APPLIES.** This article shall apply to all lands within the jurisdiction of the City of Pawnee Rock identified as unnumbered and numbered A zones, AE, AO and AH zones, on the Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) dated July 3, 1986, as amended, and any future revisions thereto. In all areas covered by this article, no development shall be permitted except through the issuance of a flood plain development permit, granted by the governing body or its duly designated representative under such safeguards and restrictions as the governing body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in sections 16-415:620. (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-405. **FLOOD PLAIN ADMINISTRATOR.** The city clerk is hereby designated as the flood plain administrator under this article. (Ord. 60.3(d); Code 2011)
- 16-406. **COMPLIANCE.** No development located within the special flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations. (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-407. **ABROGATION AND GREATER RESTRICTIONS.** It is not intended by this article to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only. (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-408. **INTERPRETATION.** In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes. (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-409. **WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside the flood plain or land uses permitted within such districts will be free from flooding or flood damage. This article shall not create liability on the part of the City of Pawnee Rock, any officer or employee thereof, for any flood damages that may result from reliance on this article or any

administrative decision lawfully made thereunder. (Ord. 60.3(d); Ord. 315; Code 2011)

- 16-410. SEVERABILITY. If any section, clause, provision or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby. (Ord. 60.3(d); Ord. 315; Code 2011)

Section 3. Administration

- 16-411. FLOOD PLAIN DEVELOPMENT PERMIT. A flood plain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in section 16-404. No person, firm, corporation, or unit of government shall initiate any development or substantial improvement or cause the same to be done without first obtaining flood plain development permit for each structure or other development. (Ord. 60.3(d); Ord. 315; Code 2011)

- 16-412. DESIGNATION OF FLOOD PLAIN ADMINISTRATOR. The city clerk is hereby appointed to administer and implement the provisions of this article. (Ord. 60.3(d); Ord. 315; Code 2011)

- 16-413. DUTIES AND RESPONSIBILITIES OF FLOOD PLAIN ADMINISTRATOR. Duties of the zoning administrator shall include, but not be limited to:
- (1) Review of applications for flood plain development permits to assure that sites are reasonably safe from flooding and that the flood plain development permit requirements of this article have been satisfied;
 - (2) Review of all applications for flood plain development permits for proposed development to assure all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is obtained by federal, state, or local law;
 - (3) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposal will be reasonably safe from flooding;
 - (4) Issue flood plain development permits for all approved applications;
 - (5) Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
 - (6) Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse;
 - (7) Verify and maintain a record of actual elevation (in relation to mean sea level) of the lowest floor, including basement of all new or substantially improved structures;
 - (8) Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been flood-proofed;
 - (9) When flood proofing techniques are utilized for a particular non-residential structure, the zoning administrator shall require certification from a registered professional engineer or architect.
- (Ord. 60.3(d); Ord. 315; Code 2011)

- 16-414. APPLICATION FOR FLOOD PLAIN DEVELOPMENT PERMIT. To obtain a flood plain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every flood plain development permit application shall:
- (1) Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify that specifically location of the proposed structure or work;
 - (2) Identify and describe the work to be covered by the flood plain development permit;
 - (3) Indicate the use or occupancy for which the proposed work is intended;
 - (4) Indicate the assessed value of the structure and the fair market value of the improvement;
 - (5) Specify whether development is located in designated flood fringe or floodway;
 - (6) Identify the existing base flood elevation and the elevation of the proposed development;
 - (7) Give such other information as reasonably may be required by the zoning administrator;
 - (8) Be accompanied by plans and specifications for proposed construction; and,
 - (9) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.
- (Ord. 60.3(d); Ord. 315; Code 2011)

Section 4. Provisions for Flood Hazard Reduction

- 16-415. GENERAL STANDARDS. No permit for flood plain development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all unnumbered and numbered A zones, AE, AO and AH zones, unless the conditions of this section are satisfied.
- All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study (FIS) data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
- Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any numbered A zone or AE zone on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- All new construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
- (a) Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (b) Construction with materials resistant to flood damages;

- (c) Utilization of methods and practices that minimize flood damages;
- (d) All electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (e) 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 the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
- (f) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage;
 - (2) All public utilities and facilities, such as sewer, gas electrical, and water systems are located and constructed to minimize or eliminate flood damage;
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, greater than five acres or 50 lots, whichever is lesser, include within such proposals base flood elevate data.
- (g) Storage, material, and equipment.
 - (1) The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
 - (2) Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent floatation, or if readily removable from the area within the time available after a flood warning.
- (h) Accessory Structure.
 - (1) Structures used solely for parking and limited storage purposes not attached to any other structure on the site, of limited investment value, and not larger than 720 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitant or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard flood plain management requirements of this article; and a flood plain development permit has been issued.
- (i) Nonconforming Use. A structure, or the use of a structure or premises that was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:
 - (1) If such structure, use, or utility service is discontinued for consecutive months, any future use of the building shall conform to this ordinance.
 - (2) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register

of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.
(Ord. 60.3(d); Ord. 315; Code 2011)

16-416. SPECIFIC STANDARDS. In all areas identified as unnumbered and numbered A zones, AE, and AH zones, where base flood elevation data have been provided, as set forth in section 16-415(2), the following provisions are required:

(a) Residential Construction. New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor.

(b) Non-Residential Construction. New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be flood-proofed to a minimum of one (1) foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the zoning administrator as set forth in section 16-413(7):(9).

(c) Require, for all new construction and substantial improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and 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 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:

(1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and

(2) The bottom of all openings shall be no higher than one (1) 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 floodwaters.

(Ord. 60.3(d); Ord. 315; Code 2011)

16-417. MANUFACTURED HOMES. (1) All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist floatation, 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.

(2) Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM 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 or one (1) foot above the base flood elevation 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.

(3) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones on the community's FIRM, that are not subject to the provisions of section 16-417(2) of this article, be elevated so that either:

(a) The lowest floor of the manufactured home is at or one (1) foot above base flood elevation; 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. (Ord. 60.3(d); Ord. 315; Code 2011)

16-418. AREAS OF SHALLOW FLOODING (AO and AH zones). Located within the areas of special flood hazard as described in section 16-404 are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

AO Zones (a) All new construction and substantial improvements of residential structures, including manufactured homes, 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 (2) feet if no depth number is specified).

(b) All new construction and substantial improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, 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 FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely flood proofed so that 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.

(c) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

AH Zones. (a) The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in sections 16-416:517.

(b) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures. (Ord. 60.3(d); Ord. 315; Code 2011)

- 16-419. **FLOODWAY.** (as determined from data available from other sources)
 If a community determines there are areas of special flood hazard that may be defined as floodway, through the use of base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to Article 4, Section A (4)(f)(4), and determines this data is suitable as criteria for requiring that new construction, substantial improvements, or other development in Zone A, the community must meet the following standards:
- (1) Adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
 - (2) Prohibit encroachments, including fill, new construction, substantial-improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
- (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-420. **RECREATIONAL VEHICLES.** (1) Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AO, AE, and AH Zones on the community's FIRM either:
- (a) Be on the site for fewer than 180 consecutive days, or
 - (b) Be fully licensed and ready for highway use*; or
 - (b) Meet the permitting, elevating, and the anchoring requirements for manufactured homes of this article.
- (* 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.
 (Ord. 60.3(d); Ord. 315; Code 2011)

Section 5. Flood Plain Management Variance Procedures

- 16-421. **ESTABLISHMENT OF APPEAL BOARD.** A three- person subcommittee of the City Council, as an Appeals Board, as established Pawnee Rock shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-422. **RESPONSIBILITY OF APPEAL BOARD.** Where an application for a flood plain development permit is denied by the zoning administrator, the applicant may apply for such flood plain development permit or variance directly to the appeal board, as defined in section 16-421.
 The board of zoning appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the zoning administrator in the enforcement or administration of this article. (Ord. 60.3(d); Ord. 315; Code 2011)
- 16-423. **FURTHER APPEALS.** Any person aggrieved by the decision of the board of zoning appeals or any taxpayer may appeal such decision to the District Court of Barton County, Kansas, as provided in K.S.A. 12-759, 12-760, and amendments thereto. (Ord. 60.3(d); Ord. 315; Code 2011)

16-424. FLOOD PLAIN MANAGEMENT VARIANCE CRITERIA. In passing upon such applications for variances, the board of zoning appeals shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this article and the following criteria:

- (1) The danger to life and property due to flood damage;
- (2) The danger that materials may be swept onto other lands to the injury of others;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flood damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
- (11) The cost 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.

(Ord. 60.3(d); Ord. 315; Code 2011)

16-425. CONDITIONS FOR APPROVING FLOOD PLAIN 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 elevation, 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, repair, 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 and the variance is the minimum necessary to preserve the historic character and design of the structure.

(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) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the granting of a variance will not result in 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: (1) the issuance of a variance to construct a structure below base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance. (Ord. 60.3(d); Ord. 315; Code 2011)

16-426. PENALTIES FOR VIOLATION. Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day the violation continues is considered a separate violation. Nothing herein contained shall prevent the city or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 60.3(d); Ord. 315; Code 2011)

16-427. AMENDMENTS. The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in BARTON COUNTY, KANSAS. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Region VII office of the Federal Emergency Management Agency (FEMA). The regulations of this ordinance are in compliance with the National Flood Insurance Program (NFIP) regulations. (Ord. 60.3(d); Ord. 315; Code 2011)

16-428. DEFINITIONS. 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.

- (a) 100-year Flood see base flood.
- (b) Accessory Structure means the same as appurtenant structure .
- (c) Actuarial Rates see risk premium rates .
- (d) Administrator means the Federal Insurance Administrator.
- (e) Agency means the Federal Emergency Management Agency (FEMA).
- (f) Appeal means a request for review of the Flood Plain Administrator's interpretation of any provision of this article or a request for a variance.
- (g) Appurtenant Structure means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.
- (h) 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 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.

- (l) Area of Special Flood Hazard is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.
- (j) Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.
- (k) Basement means any area of the structure having its floor subgrade (below ground level) on all sides.
- (l) Building see structure.
- (m) Chief Executive Officer or Chief Elected Official means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.
- (n) Community means any state or area or political subdivision thereof, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.
- (o) Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (p) Elevated Building means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
- (q) Eligible Community or Participating Community means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP)
- (r) 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.*"
- (s) 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.
- (t) 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).
- (u) 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 and/or (2) the unusual and rapid accumulation or runoff of surface waters from any source.
- (v) Flood Boundary and Floodway Map (FBFM) means an official map of a community on which the administrator has delineated both special flood hazard areas and the designated regulatory floodway.

- (w) Flood Elevation Determination means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.
- (x) Flood Elevation Study means an examination, evaluation and determination of flood hazards.
- (y) Flood Fringe means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.
- (z) Flood Hazard Boundary Map (FHBM) means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.
- (aa) Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.
- (bb) Flood Insurance Study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.
- (cc) Flood Plain or Flood-Prone Area means any land area susceptible to being inundated by water from any source (see flooding).
- (dd) Flood Plain 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.
- (ee) Flood Plain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purposes ordinances (such as flood plain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.
- (ff) Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.
- (gg) Floodway or 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 one foot.
- (hh) Floodway Encroachment Lines means the lines marking the limits of floodways on federal, state and local flood plain maps.
- (ii) Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain 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, as determined from data available from other sources, conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.
- (jj) Functionally Dependent Use means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.
- (kk) Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(ll) 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.

(mm) 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 flood-proofing design requirements of this ordinance.

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

(oo) 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.

(pp) Map means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

(qq) Market Value or Fair Market Value means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

(rr) Mean Sea Level means, for purposes of the National Flood Insurance Program (NFIP), 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 (FIRM) are referenced.

(ss) 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 floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

(tt) New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lot 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 the community.

(uu) (NFIP) means the National Flood Insurance Program (NFIP).

(vv) Participating Community also known as an eligible community, means a community in which the administrator has authorized the sale of flood insurance.

(ww) Permit means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities

(xx) Person includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies..

(yy) Principally Above Ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

(zz) 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.

(aaa) Remedy a Violation means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

(bbb) 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 National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

(ccc) Special Flood Hazard Area see area of special flood hazard.

(ddd) Special Hazard Area means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

(eee) Start of Construction includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were 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 slabs or footings, the installation of piles, the construction of columns, 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, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, 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.

(fff) State Coordinating Agency means that agency of the state government, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

(ggg) Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure" for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a

manufactured home on a permanent foundation, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

(hhh) Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(iii) 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 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 that 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."

(jjj) Variance means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

(kkk) 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 by this ordinance is presumed to be in violation until such time as that documentation is provided.

(kkk) 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 floodplain riverine areas. (Ord. 60.3(d); Code 2011)