

Passed: Nov. 22, 2016
Published: Nov. 30, 2016

ORDINANCE NO. 2302

AN ORDINANCE ESTABLISHING NEW CHAPTER 17.08 OF THE DERBY MUNICIPAL CODE CREATING THE DERBY FLOODPLAIN MANAGEMENT CODE SETTING FORTH AND ESTABLISHING CERTAIN CRITERIA FOR DEVELOPMENT AND VARIANCE PROCEDURES WITHIN THE IDENTIFIED FLOODPLAIN AREA IN ORDER TO MAINTAIN ELIGIBILITY FOR PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. Chapter 17.08 of the Derby Municipal Code is hereby established as follows:

Chapter 17.08

FLOODPLAIN MANAGEMENT

Sections:

- 17.08.010 Purpose**
- 17.08.020 Title**
- 17.08.030 Statutory Authorization and Findings of Fact**
- 17.08.040 Definitions**
- 17.08.050 General Provisions**
- 17.08.060 Administration**
- 17.08.070 Provisions for Flood Hazard Reduction**
- 17.08.080 Floodplain Management Variance Procedures**
- 17.08.090 Penalties**
- 17.08.100 Amendments**

Section 2. Section 17.08.010 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.010—Purpose

It is the purpose of this chapter to promote the public health, safety, and general welfare; to minimize those losses described in 17.08.030(B)(1); to establish or maintain the City'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(d) and K.A.R. 5-44-4 by applying the provisions of this chapter to:

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;

Division of Water Resources

NOV 18 2016

Topeka Field Office

Topeka Field Office

NOV 18 2016

Division of Water Resources

- 2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- 3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

Section 3. Section 17.08.020 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.020—Title

This title shall be known as the Floodplain Management Code of the City. It is supplemental to other ordinances of the City which manage storm waters.

Section 4. Section 17.08.030 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.030—Statutory Authorization and Findings of Fact

(A) Statutory Authorization

- 1. Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on *October 19*, 2016.

- 2. Kansas Statutory Authorization

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare.

(B) Findings of Fact

- 1. Flood Losses Resulting from Periodic Inundation

The special flood hazard areas of Derby, 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.

- 2. General Causes of the Flood Losses

Division of Water Resources
 OCT 18 2016
 Topeka Field Office

Topeka Field Office
 OCT 18 2016
 Division of Water Resources

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

3. Methods Used To Analyze Flood Hazards

The Flood Insurance Study (FIS) that is the basis of this chapter uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

- A. Selection of a base flood that 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 base flood selected for this chapter is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this chapter. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated December 22, 2016 as amended, and any future revisions thereto.
- B. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- C. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
- D. Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.
- E. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

Section 5. Section 17.08.040 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.040—Definitions

The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

1. "Accessory Structure" or "Appurtenant Structure" means a structure that is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure.
2. "Actuarial Rates" 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 National

Flood Disaster Protection Act of 1973 and the accepted actuarial principles. Actuarial rates or Risk Premium Rates include provisions for operating costs and allowances.

3. "Administrator" means the Federal Insurance Administrator.
4. "Agency" means the Federal Emergency Management Agency (FEMA).
5. "Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for variance.
6. "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 (1) to three (3) feet where a clearly defined channel does not exist, where the path of the 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" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.
8. "Base Flood" or "100-Year Flood" means the flood having a one percent chance of being equaled or exceeded in any given year, also known as the "regulatory flood".
9. "Base Flood Elevation (BFE)" means the computed elevation to which floodwater is anticipated to rise during the base flood.
10. "Basement" means any area of the structure having its flood subgrade (below ground level) on all sides.
11. "Building" see "Structure."
12. "Chief Engineer" means the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture.
13. "Chief Executive Officer" or "Chief Elected Official" means the official of the City who is charged with the authority to implement and administer laws, ordinances, and regulations for the community.
14. "Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
15. "Channel" means a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow thus is that water which is flowing within the limits of a defined channel.

Division of Water Resources

OCT 18 2016

Topeka Field Office

CITY OF TOPEKA

16. "Development" means any man made change to improved or unimproved property, including but not limited to buildings or other structures, fences, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
17. "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.
18. "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).
19. "Existing Construction" means for the purposes of determining rates, structures which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effected before that date. "Existing construction" may also be referred to as "existing structures."
20. "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.
21. "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).
22. "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 waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).
23. "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.

Division of Water Resources
 OCT 18 2016
 Topoka Field Office

Division of Water Resources
 OCT 18 2016
 Topoka Field Office

24. "Flood Elevation Determinations" means a determination by the Administrator of the water surface elevations of the base flood, i.e., the level of flooding that has a one percent or greater chance of occurrence in any given year.
25. "Flood Elevation Study" means an examination, elevation and determination of flood hazards and if appropriate, corresponding water surface elevations.
26. "Flood Fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.
27. "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.
28. "Flood Hazard Map" 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.
29. "Flood Insurance Rate Map (F.I.R.M.)" means the official map of a community on which the administrator has delineated both special flood hazard areas and the risk premium zones applicable to the community.
30. "Flood Insurance Study (F.I.S.)" means an examination, elevation and determination of flood hazards and, if appropriate, corresponding water surface elevations.
31. "Floodplain or Flood-Prone Area" means any land area susceptible to being inundated by water from any source (see "flooding").
32. "Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to an emergency preparedness plan, flood control works and flood plain management regulations.
33. "Floodplain Management Regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain 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.
34. "Flood Protection System" means those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard". Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound engineering standards.

[Faint, illegible text]

Division of Water Resources

NOV 18 2016

Topeka Field Office

35. "Flood proofing" means any combination of structural and non-structural 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.
36. "Floodway or Regulatory Floodway" means the channel of a river, creek 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.
37. "Flood Encroachment Lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.
38. "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 conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.
39. "Functionally Dependent Use" means a use that cannot perform its intended purpose unless it is located or carried out in a 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.
40. "Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
41. "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 programs as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.
42. "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.
43. "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

Division of Water Resources

OCT 18 2016

Topeka Field Office

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 chapter.

44. “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 attached to the required utilities. The term “manufactured home” does not include “recreational vehicle.”
45. “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.
46. “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).
47. “Market Value” or “Fair Market Value” means an estimate of what is fair, economic, just and equitable value under normal local market conditions.
48. “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.
49. “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.
50. “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.
51. “NFIP” means the National Flood Insurance Program
52. “Overlay District” means a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.
53. “Permit” means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as:

Topeka Field Office

OCT 18 2016

DIVISION OF WATER RESOURCES

- (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.
54. "Person" means any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.
 55. "Principally Above Ground" means at least 51 percent of the actual cash value of the structure, less land value, is above ground.
 56. "Reasonably Safe from Flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
 57. "Recreational Vehicle" means a vehicle that is:
 1. built on a single chassis;
 2. 400 square feet or less when measured at its largest horizontal projections;
 3. designed to be self-propelled or permanently able to be towed by a light-duty truck; and
 4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
 58. "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.
 59. "Regulatory Flood Elevation" means an elevation indicated on the F.I.R.M. as the elevation of the 100 year flood.
 60. "Regulatory Flood Protection Elevation" means an elevation one foot higher than the water surface elevation of the regulatory flood.
 61. "Special Hazard Area" means an area having special flood hazards and show on an FHBM, FIRM or FBHM as zones (unnumbered or numbered) A, AO, AE, or AH.
 62. "Start of Construction" means the date the building permit was issued for new construction including substantial improvements; 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 the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary

Topeka Field Office

OCT 18 2016

Division of Water Resources

forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwellings 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.

63. “State Coordinating Agency” means the Division of Water Resources, Kansas Department of Agriculture, 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.
64. “Structure” for floodplain management purposes, means a walled and roofed structure, including gas or liquid storage tanks, that are principally above the 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.
65. “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
66. “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 a local building trades or 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.”
67. “Temporary Structure” means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, but at no time shall it include manufactured homes used as residences.
68. “Variance” means a grant of relief by the City from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use

Division of Water Resources

OCT 18 2016

Topeka Field Office

or structure and cannot be varied by the City.

- 69. "Violation" means the failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance required by these regulations is presumed to be in violation until such time as that documentation is provided.
- 70. "Water Surface Elevation" mean 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.

Section 6. Section 17.08.050 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.050—General Provisions

(A) Land to Which Chapter Applies

This chapter shall apply to all lands within the jurisdiction of Derby, Kansas identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated December 22, 2016 of the Flood Insurance Rate Map (FIRM) as amended and any future revisions thereto. In all areas covered by this chapter, no development shall be permitted except through the issuance of a floodplain development permit, granted by the City of Derby or its duly designated representative under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the City, and as specifically noted in 17.08.070.

(B) Compliance

No development located within the special flood hazard areas of this City shall be located, extended, converted, or structurally altered unless in full compliance with the terms of this chapter and other applicable regulations.

(C) Abrogation and Greater Restriction

It is not intended by this chapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

(D) Interpretation

Division of Water Resources

NOV 18 2016

Topeka Field Office

[Faint mirrored text and stamps from the reverse side of the page are visible in this area.]

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, 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 Kansas statutes.

(E) Warning and Disclaimer of Liability

The degree of flood protection required by this chapter 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 heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This chapter shall not create a liability on the part of City of Derby, any officer or employee thereof, for any flood damages that may result from reliance on this chapter or any administrative decision lawfully made there under.

Section 7. Section 17.08.060 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.060—Administration

(A) Floodplain Development Permit

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in 17.08.050(A). 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 a separate floodplain development permit for each structure or other development.

(B) Designation of Floodplain Administrator

The Stormwater Manager or such other individual as designated by the City Manager is hereby appointed to administer and implement the provisions of this chapter.

(C) Duties and Responsibilities of Floodplain Administrator

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

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this chapter have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;

Topeka Field Office

NOV 18 2016

Division of Water Resources

Division of Water Resources

NOV 18 2016

Topeka Field Office

3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain 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 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 the 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 residential and non-residential structures have been floodproofed; and
9. When floodproofing techniques are utilized for a particular structure, the floodplain administrator shall require certification from a registered professional engineer or architect and shall maintain a copy of said certification.

(D) Application for Floodplain Development Permit

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and subdivision, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain 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 the 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 floodplain administrator;
8. Be accompanied by plans and specification for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

Section 8. Section 17.08.070 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.070—Provisions for Flood Hazard Reduction

(A) General Standards

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes,

Topeka Field Office

NOV 18 2016

within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.

2. 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 chapter. If Flood Insurance Study data is not available, the City shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones 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 City.
4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
 - A. Design or adequate 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 damage;
 - C. Utilization of methods and practices that minimize flood damages, consistent with economic practicability;
 - 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 from them during flooding; and
 - 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:
 - i. All such proposals are consistent with the need to minimize flood damage;
 - ii. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
 - iii. Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - iv. Base flood elevation data is provided for all development proposals of greater than five (5) acres or fifty (50) lots, whichever is lesser, including proposals for manufactured home parks and subdivisions.

5. Storage, Material, and Equipment:

The storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

Topeka Field Office

NOV 18 2016

Division of Water Resources

6. Nonconforming Use: A structure, or the use of a structure or premises that was lawful before the passage or amendment of this chapter, but which is not in conformity with the provisions of this chapter, may be continued subject to the following conditions;
- A. If such structure, use, or utility service is discontinued for six (6) consecutive months, any future use of the structure shall conform to this chapter.
 - B. 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.

(B) Specific Standards

1. Elevation of Property: Applicants shall provide information identifying the elevation of the property in relation to mean sea level and/or other datum required by the City of the lowest floor (including basement of the proposed structure). In addition, the applicant shall provide this information for the second lowest floor when the lowest floor is below grade on one or more sides. The applicant shall also be required to submit certification by a registered professional engineer or licensed land surveyor that the finished fill and building floor elevations and other flood protection measures were accomplished in compliance with the provisions of this chapter or other applicable regulations.
2. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in 17.08.070(A)(2), the following provisions are required:
 - A. Residential Construction:
 - (1) New Construction or substantial-improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to a minimum of one (1) foot above base flood level unless the basement is floodproofed in accordance with 17.08.070(B)(2). The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
 - (2) Residential Basement Floodproofing
 - (a) Residential structures with basements located in Zones AE, AO or AH may be floodproofed only if they are subject to:
 - i. Flood depths of three (3) feet or less;
 - ii. Flood velocities five (5) feet per second or less; and
 - iii. Flood warning times 12 hours or greater

Topeka Field Office

NOV 18 2016

Division of Water Resources

- (b) New construction or substantial-improvement of any residential structures, including manufactured homes, shall require the basement to be:
- i. Designed and built so that any basement area, together with attendant utilities and sanitary facilities below the floodproofed design level, is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capacity to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to the floodproofed design level and shall be designed so that minimal damage will occur from floods that exceed that level. The floodproofed design level shall be an elevation three (3) feet above the level of the base flood where the difference between the base flood and the 500 year flood is three (3) feet or less and four (4) feet above the level of the base flood where the difference is greater than three (3) feet;
 - ii. Basements constructed in accordance with these regulations shall not be used for sleeping purposes.
 - iii. Have the top of the floor of any basement area no lower than five (5) feet below the elevation of the base flood;
 - iv. Have the area surrounding the structure on all sides filled to or above the elevation of the base flood. Fill must be compacted with slopes protected by vegetative cover;
 - v. Have a registered professional engineer or architect develop or review the building's structural design, specifications, and plans, including consideration of the depth, velocity and duration of flooding, type and permeability of soils at the building site, and certify that the basement design and methods of construction proposed are in accordance with accepted standards of practice for meeting the provisions of this chapter. This certification shall include the specific elevation in relation to mean sea level and/or other datum required by the City to which the structure is flood proofed. This certification shall furthermore certify that the resulting construction has been inspected and meets the requirements of the flood proofing design plan; and
 - vi. Be inspected by the building inspector or other authorized representative of the City to verify that the structure is built according to its design and those provisions of this section which are verifiable.

B. Non-Residential Construction:

- (1) 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

Topeka Field Office

OCT 18 2016

Division of Water Resources

sanitary facilities, be dry floodproofed 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 floodplain administrator as set forth in 17.08.060(C)(7),(8) and (9).

- (2) 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 flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
- (a) A minimum of two (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
 - (b) 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 flood waters.

(C) Manufactured Homes

1. All manufactured homes placed within all unnumbered and numbered A zones, AE, and AH zones, on the City's FIRM shall 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 flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the City'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 a minimum of 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 or professional engineer.

Topeka Field Office

NOV 18 2016

Division of Water Resources

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 City's FIRM, that are not subject to the provisions of 17.08.070(C)(2) of this chapter, 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 or professional engineer.

(D) Areas of Shallow Flooding (AO and AH Zones)

Located within special flood hazard areas as described in 17.08.050(A) 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:

1. 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 City'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 City FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that level 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.
2. 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 17.08.040(b).
 - B. Adequate drainage paths shall be required around structures on slopes in order to guide floodwaters around and away from proposed structures.

Topeka Field Office

NOV 18 2016

Division of Water Resources

NOV 18 2016
 DIVISION OF WATER RESOURCES
 TOPEKA, KANSAS

(E) Floodway

Located within special flood hazard areas established in 17.08.050(A), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply to the Floodway area:

1. The City shall select and 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. The City shall prohibit any 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 and certified by a professional registered engineer that the proposed encroachment shall not result in any increase in flood levels within the City during the occurrence of the base flood discharge.
3. If 17.08.070(E)(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of 17.08.070.
4. In unnumbered A zones, the City shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in 17.08.070(A)(2).

(F) Recreational Vehicles

1. Recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the City's FIRM shall comply with the following:
 - a. Be on the site for fewer than 180 consecutive days, and
 - b. Be fully licensed; and
 - c. Be ready for highway use, meaning the recreational vehicle 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; or
 - d. Meet the permitting, elevation and anchoring requirements for manufactured homes of this chapter.

Section 9. Section 17.08.080 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.080—Floodplain Management Variance Procedures**(A) Establishment of Appeal Board**

Topeka Field Office
 OCT 18 2016
 Division of Water Resources

The Board of Zoning Appeals, as established by the City of Derby shall have the power to hear and decide appeals and requests for variances from the floodplain management requirements of this chapter.

(B) Responsibility of Appeal Board

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 17.08.080(A).

The Appeal Board shall have the power to 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 chapter.

(C) Application, Notice and Hearing

Any person desiring to apply for an appeal or a variance shall complete an application on a form provided by the Floodplain Administrator and shall submit such application along with any other information that may be required. The application and any supporting materials shall be forwarded to the Appeal Board for review in accordance with the public hearing procedures established by K.S.A. 12-759, et seq., and restated in the City's zoning regulations. In addition to the review procedures established in K.S.A. 12-759, et seq., and those contained in the City's zoning regulations, the Appeal Board shall also consider the variance criteria identified in 17.08.080(E) and variance conditions identified in 17.08.080(F) when considering variances for development in a floodplain.

(D) Further Appeals

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

(E) 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 chapter, 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 City;
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;

Topeka Field Office

NOV 18 2016

Division of Water Resources

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.

(F) 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 elevation, providing items numbered 2-6 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, provide 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 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.
 - c. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
7. Upon consideration of the factors listed above and the purposes of this Chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Chapter.
8. A variance granted by the Appeal Board or the City for regulations in this Chapter does not apply to flood insurance requirements which remain in place for any varied use or structure and cannot be varied by the City.

Topeka Field Office

NOV 18 2016

Division of Water Resources

Section 10. Section 17.08.090 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.090—Penalties for Violation

(A) Violation of the provisions of this chapter 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 chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Derby or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

(B) The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this chapter and to abate nuisances maintained in violation thereof. In the event that any building or structure is or is proposed to be erected, constructed, altered, converted or maintained in violation of this chapter, or any building, structure, or land is proposed to be used in violation of this chapter, the City may, in addition to any other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful, erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of such building, structure or land.

Section 11. Section 17.08.100 of the Derby Municipal Code is hereby established and shall read as follows:

17.08.100—Amendments

The regulations, restrictions, and boundaries set forth in this chapter may from time to time be amended, supplemented, changed, or repealed 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 the City of Derby. 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 FEMA Region VII office. The regulations of this chapter are in compliance with the NFIP regulations.

Section 12. Severability

Topeka Field Office

NOV 18 2016

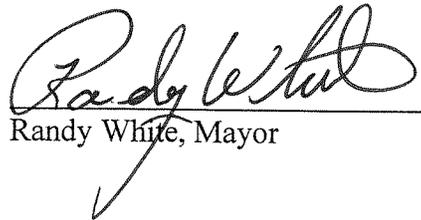
Division of Water Resources

Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

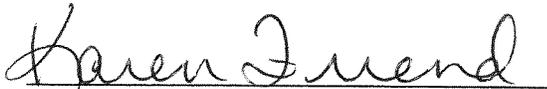
Section 13. Effective Date

This Ordinance shall take effect and be in force from and after its publication or a summary thereof once in the official city newspaper.

PASSED BY THE CITY COUNCIL this 22nd day of November, 2016, and SIGNED BY THE MAYOR.


Randy White, Mayor

Seal
Attest:


Karen Friend, City Clerk

Approved as to form:


Jacqueline R. Butler, City Attorney

APPROVED
This 19th day of October, 2016
For Mayor for
DAVID W. BARFIELD, P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

Topeka Field Office

OCT 18 2016

Division of Water Resources

