

ORDINANCE NO. 0-2008-130

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "TYLER UNIFIED DEVELOPMENT CODE", ARTICLE VII., "ENVIRONMENTAL REGULATIONS", DIVISION F., "FLOODPLAIN REGULATIONS", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY AMENDING THE FLOODPLAIN REGULATIONS TO CONFORM MORE CLOSELY TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REQUIREMENTS; ESTABLISHING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to promote the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, Texas Local Government Code Section 211.003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

WHEREAS, the Texas Legislature has, in the Flood Control Insurance Act, Texas Water Code Section 16.315, has delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses; and

WHEREAS, on April 23, 2008, the Tyler City Council adopted the Unified Development Code, which contains floodplain regulations; and

WHEREAS, it is important to amend the Unified Development Code to amend the floodplain requirements so that they conform more closely to Federal Emergency Management Agency (FEMA) requirements; and

WHEREAS, on September 2, 2008, the Planning and Zoning Commission reviewed this proposed ordinance and voted to recommend approval;

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

PART 1: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VII., "Environmental Regulations", Division F., "Floodplain Regulations", is hereby amended by amending Sections 10-550 through 10-579 to read as follows:

Secs. 10-550 through 10-551. No changes.

Sec. 10-552. Lands governed by this Division.

This Division shall apply to all areas of special flood hazard within the jurisdiction of the City of Tyler, Texas. (Ord. No. 0-2008-130, 9/24/08)

Sec. 10-553. Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency, in a scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Smith County, Texas and Incorporated Areas", dated September 26, 2008, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRMs and FBFMs) dated September 26, 2008 and any revisions thereto, are hereby adopted by reference and declared to be part of this ordinance. (Ord. No. 0-98-91, 11/18/98) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08/)

Sec. 10-554 through 10-557. No changes.

Sec. 10-558. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder. (Ord. No. 0-98-91, 11/18/98) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Sec. 10-559. Designation of Floodplain Administrator

The development services engineer is hereby appointed the floodplain administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations), or successor regulations, pertaining to floodplain management. (Ord. No. 0-98-91, 11/18/98; Ord. 0-2006-98, 11/21/06) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Sec. 10-560. Duties and Responsibilities of Floodplain Administrator

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

- a. Maintaining and holding open for public inspection all records pertaining to this ordinance.
- b. Reviewing permit applications to determine whether proposed building sites will be reasonably safe from flooding.
- c. Review, approve or deny all applications for development permits required by adoption of this ordinance.
- d. Reviewing permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344), or successor statutes, from which prior approval is required.
- e. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the floodplain administrator shall make the necessary interpretation based on information supplied by applicant.
- f. Notifying, in riverine situations, adjacent communities and the state coordinating agency, currently the Texas Water Development Board (TWDB) or successor, prior to any alteration or relocation of a watercourse and submitting evidence of such notification to the Federal Emergency Management Agency.
- g. Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- h. When base flood elevation data have not been provided in accordance with Sec. 10-553 the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source in order to administer the provisions of Secs. 10-564 through 10-569.
- i. When regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the City's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- j. Under the provisions of 44 CFR Chapter 1, Section 65.12 of the National Flood Insurance Program regulations or successor, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required

by Section 65.12 or successor. (Ord. No. 0-98-91, 11/18/98; 0-2006-98, 11/21/06) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Secs. 10-561 through 10-562. No changes

Sec. 10-563. Variance Procedures

- a. The Construction Board of Adjustment and Appeals (the Board) shall hear and render judgment of requests for variances from the requirements of this division.
- b. The board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this ordinance.
- c. Any person(s) aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction.
- d. The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- e. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
- f. Variances may be issued for new construction and substantial improvements to be erected on a lot on one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Sec. 10-561 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- g. Upon consideration of the factors noted above and the intent of this ordinance, the board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance as set forth in Sec. 10-551.
- h. Variances may not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- i. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure. Also, any repair or rehabilitation to a structure that has been designated as a Tyler Historic Landmark must comply with any applicable Certificate of Appropriateness or other applicable requirements in the historic preservation regulations in Article XI. of this Code.
- j. Prerequisites for granting variances:

1. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

2. Variances may only be issued upon (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing ordinances.

3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

k. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

1. the criteria outlined in Sec. 10-563 are met; and

2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. (Ord. No. 0-98-91, 11/18/98) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Sec. 10-564. No changes.

Sec. 10-565. Specific Standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in sections 10-553, 10-560, and 10-566 the following are required:

a. Residential construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to one foot above the base flood elevation. A registered professional engineer or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection is satisfied and that the proposed finished floor elevation will be one foot above base flood elevation.

b. Nonresidential construction

New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall

develop and/or review design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with this subsection. A record of such certification, which includes the specific elevation in relation to mean sea level to which such structures are flood proofed, shall be maintained by the floodplain administrator.

c. Enclosures

New construction and substantial improvements with fully enclosed areas below the floor that are subject to flooding shall be designed to equalize automatically the hydrostatic flood forces on exterior walls by allowing for 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 openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided.
2. The bottoms of all openings shall be no higher than one foot above grade.
3. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit automatic entry and exit of floodwaters.

d. Manufactured homes

1. All manufactured homes to be placed within Zone A shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

2. All manufactured homes to be placed or substantially improved within Zones AH and AE on the city's FIRM shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with Sec. 10-565.

3. Require that manufactured homes be placed or substantially improved on sites in an existing home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to this subsection be elevated so that either:

(a) the lowest floor of the manufactured home is at or above the 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 36 inches in height above grade

and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

e. Recreational Vehicles

1. Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- (a) be on the site for fewer than 180 consecutive days,
- (b) be fully licensed and ready for highway use, or
- (c) meet the permit requirements of Section 10-561 and the elevation and anchoring requirements for "manufactured homes" in subsection (d) of this section.

2. 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. No. 0-98-91, 11/18/98) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Sec. 10-566. No changes.

Sec. 10-567. Standards for Areas of Shallow Flooding AO/AH Zones

Located within the areas of special flood hazard established in Sec. 10-553 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following apply:

a. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade, at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

b. All new construction and substantial improvements of nonresidential structures shall:

1. Have the lowest floor (including basement) elevated above the highest adjacent grade, at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or

2. Be designed together with attendant utility and sanitary facilities, so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

3. Have adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures in Zones AH or AO.

4. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, with the information submitted pursuant to Sec. 10-561 are satisfied and that the proposed finished floor elevation is to be at least one foot above the base flood elevation. (Ord. No. 0-98-91, 11/18/98) (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Secs. 10-568 – 10-569. No changes.

Sec. 10-570 - 579. Reserved.

PART 2: That Tyler City Code Chapter 10, "Unified Development Code", Article XIII., "Definitions", Division A., "Definitions", is hereby amended by adding or amending the following Definitions in the appropriate alphabetical order to read as follows:

Area of special flood hazard

The land in the floodplain within the city subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Insurance Rate Map (FIRM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AE, AH, AO, A99, VE or V. (Ord. No. 0-2008-43; 4/23/08) (Ord. No. 0-2008-130; 9/24/08)

Flood Elevation Study

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. (Ord. No. 0-2008-130; 9/24/08)

Flood Insurance Rate Map (FIRM)

An official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community. (Ord. No. 0-2008-130; 9/24/08)

Flood Insurance Study (FIS)

See Flood Elevation Study. (Ord. No. 0-2008-130; 9/24/08)

Special Flood Hazard Area (SFHA)

See Area of special flood hazard. (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-~~130~~; 9/24/08)

Substantial damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. (Ord. No. 0-2008-~~130~~; 9/24/08)

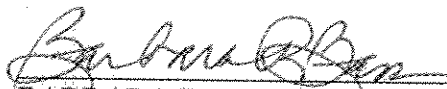
Violation

The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (de)(3), (e)(2), (e)(4) or (e)(5) or successor is presumed to be in violation until such time as that documentation is provided. (Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-~~130~~; 9/24/08)

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be September 26th, 2008.

PASSED AND APPROVED this the 24th day of September, A.D., 2008.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:



STACY C. LANDERS, CITY ATTORNEY