

## CHAPTER XVI: ZONING AND PLANNING

### Article

1. CITY PLANNING COMMISSION/BOARD OF ZONING REGULATIONS
2. ZONING REGULATIONS
3. FLOODPLAIN MANAGEMENT



## ARTICLE 1: CITY PLANNING COMMISSION/BOARD OF ZONING REGULATIONS

### Section

- 16-101 Commission re-establishment
- 16-102 Membership, terms, interest, and compensation
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### § 16-101 COMMISSION RE-ESTABLISHMENT.

There is hereby reestablished the City Planning Commission which is composed of five members of which all members shall be residents of the city. The Planning Commission was originally created by Ord. B-159 which was passed on August 12, 1980.  
(1994 Code, § 16-101) (Ord. B-482, passed 1-16-2006)

### § 16-102 MEMBERSHIP, TERMS, INTEREST, AND COMPENSATION.

(a) The members of the Planning Commission shall be appointed by the Mayor with the consent of the City Council at the first regular meeting of the governing body in February of each year and take office at the next regular meeting of the Commission.

(b) The members of the Commission first appointed shall serve respectively for terms of one year, two years, and three years, divided equally or as nearly equal as possible between those terms. Thereafter, all members shall be appointed for terms of three years each.

(c) 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 for the unexpired term of the member leaving the membership. If any member has a conflict of interest in any matter coming before the Commission, he or she shall be disqualified to discuss or vote on the matter.

(d) The governing body may adopt rules and regulations providing for the 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.

(1994 Code, § 16-102) (Ord. B-482, passed 1-16-2006)

#### § 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 by-laws. 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 by-laws for the transaction of business and hearing procedures which shall be subject to the approval of the governing body. 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.

(1994 Code, § 16-103) (Ord. B-482, passed 1-16-2006)

#### § 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 article 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 the 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.

(1994 Code, § 16-104) (Ord. B-482, passed 1-16-2006)

#### § 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 by-laws for its operation which shall include hearing procedures. 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 evidence presented, findings of fact, decisions, and the vote upon each appeal. The governing body shall establish a scale of reasonable fees to be paid in advance by the appealing party.

(1994 Code, § 16-105) (Ord. B-482, passed 1-16-2006)

#### § 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 monies are available under the budget, the governing body may appropriate monies 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 monies from the state or federal government or from any other source for such purposes.

(1994 Code, § 16-106) (Ord. B-482, passed 1-16-2006)



## ARTICLE 2: ZONING REGULATIONS

### Section

- 16-201 Zoning regulations incorporated
- 16-202 Official map
- 16-203 Public hearing
- 16-204 Jurisdiction
- 16-205 Official copies

### § 16-201 ZONING REGULATIONS INCORPORATED.

Zoning regulations are hereby approved and adopted by the governing body of the city, as prepared and published in book form as model regulations by the City Planning Commission with the technical assistance of Foster & Assistance, Planning Consultants of Wichita, Kansas, and the City Zoning Administrator under the date of March 4, 1998 and entailed “Zoning Regulations of the City of Victoria, Kansas”, and the same are hereby incorporated by reference as fully as if set out herein. (Ord. B-421, passed 4-13-1998; Ord. B-497, passed 8-20-2007; Ord. B-518, passed 9-20-2010; Ord. B-525, passed 2-20-2012)

### § 16-202 OFFICIAL MAP.

There are further herein incorporated by reference and adopted an official zoning map delineating the boundaries of zoning districts and the classification of such districts, which map shall be marked “Official copy of the zoning district map incorporated into zoning regulations by adoption of Ord. B-421 by the governing body of the city on April 13, 1998”, and filed with the Zoning Administrator to be open for the inspection and available to the public at all reasonable business hours. (Ord. B-421, passed 4-13-1998)

### § 16-203 PUBLIC HEARING.

The advertised public hearing required by state law was duly held on March 4, 1998 by the City Planning Commission, and a discussion of said zoning regulations and map was had at the hearing; and the zoning regulations and map in model code from herein adopted are a true and correct copy of those regulations as adopted by the Planning Commission. (Ord. B-421, passed 4-13-1998)

§ 16-204 JURISDICTION.

From the effective date of this article, the zoning regulations and official zoning map herein incorporated by reference shall govern all use of the land and the location of buildings and other structures placed within the city.

(Ord. B-421, passed 4-13-1998)

§ 16-205 OFFICIAL COPIES.

Not less than three copies of the zoning regulations in book form marked "Official Copy as incorporated by Ord. B-421", shall be filed with the City Clerk to be open for inspection and available to the public at all reasonable business hours.

(Ord. B-421, passed 4-13-1998)



## ARTICLE 3: FLOODPLAIN MANAGEMENT

### Section

- 16-301 Statutory authorization
- 16-302 Findings of fact
- 16-303 Definitions
- 16-304 City Superintendent responsibilities
- 16-305 Official map
- 16-306 Permits required
- 16-307 New developments; manufactured homes and subdivisions
- 16-308 New water and sewer
- 16-309 Compliance with the National Flood Insurance Program
- 16-310 Variance procedures
- 16-311 Nonconforming use
- 16-312 Abrogation and greater restrictions
- 16-313 Interpretation
- 16-314 Warning and disclaimer of liability
- 16-315 Appeal
- 16-316 Amendments; conflicts
- 16-317 Penalty

### § 16-301 STATUTORY AUTHORIZATION.

The State Legislature has in K.S.A. 12-741 et seq., in particular K.S.A. 12-766, delegated the responsibility to local governmental units to adopt regulations designed to protect the health, safety, and general welfare. Therefore, the governing body of the city ordains as follows.  
(Ord. B-379, passed 1-8-1996)

### § 16-302 FINDINGS OF FACT.

(a) Flood losses resulting from periodic inundation. The flood hazard areas of the city 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 the flood losses. These flood losses are caused by:

- (1) The cumulative effect of obstructions in floodways causing increases in flood heights and

velocities; and/or

(2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

(c) Statement of purpose. It is the purpose of this article to promote the public health, safety, and general welfare and to minimize those losses described in division (a) above by applying the provisions of this article to:

(1) 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;

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

(3) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard; and

(4) Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

(Ord. B-379, passed 1-8-1996)

#### § 16-303 DEFINITIONS.

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

**BASE FLOOD.** The flood having a 1% chance of being equalled or exceeded in any given year.

**BASEMENT.** Any area of the building having its floor subgrade (below ground level) on all sides.

**DEVELOPMENT.** Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** 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.

**FLOOD.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; or

- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD-PROOFING.** Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

**HISTORIC STRUCTURE.** Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- (2) 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;

- (3) 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

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (A) By an approved state program as determined by the Secretary of the Interior; or

- (B) Directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR.** 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 non-elevation design requirements of this article.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term **MANUFACTURED HOME** also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term **MANUFACTURED HOME** does not include park trailers, travel trailers, and other similar vehicles.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**NEW CONSTRUCTION.** For the purpose 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 a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable 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.

**REGULATORY FLOOD ELEVATION.** The water surface elevation of the 100-year flood.

**SPECIAL FLOOD HAZARD AREA.** The land within a community, subject to a 1% or greater change of flooding in any given year. This land is identified as Zone A on the official map.

**START OF CONSTRUCTION.** For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. Law No. 97-348), includes substantial improvement, and means the date the building permit was issued, provided, the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The **ACTUAL START** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the **ACTUAL START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

**SUBSTANTIAL DAMAGE.** 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% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.**

- (1) Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless

of the actual repair work performed.

(2) The term does not, however, include either:

(A) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(B) Any alteration of a “historic structure”; provided, that the alteration will not preclude the structure’s continued designation as a “historic structure”.

**VARIANCE.** A grant of relief by a community from the terms of a floodplain management regulation.

**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 these regulations is presumed to be in VIOLATION until such time as that documentation is provided.

(Ord. B-379, passed 1-8-1996)

#### § 16-304 CITY SUPERINTENDENT RESPONSIBILITIES.

(a) Generally. The City Superintendent hereby has these added responsibilities and is authorized and directed to enforce all of the provisions of this ordinance and all other ordinances of the city now in force or hereafter adopted, related to zoning, subdivision, or building codes.

(b) Additional responsibilities. The City Superintendent shall be appointed to these additional responsibilities by resolution of the governing body and his or her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the City Superintendent, the governing body of the city shall designate an acting enforcement official.

(c) Review generally. The City Superintendent shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by federal or state law.

(d) Review specifically. The City Superintendent, in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in § 16-303) will:

(1) Obtain, review, and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from federal, state, or other sources, until such other data is provided by the Federal Insurance Administration in a flood insurance study; and require within areas designated as Zone A on the official map that the following performance standards be met.

(A) Residential Construction. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above one foot above

the base flood elevation.

(B) Nonresidential construction. New construction or substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above one foot above the level of the base flood elevation or, together with attendant utility and sanitary facilities, be flood-proofed so that below such a level the structure is water-tight 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 certify that the standards of this subsection are satisfied. Such certification shall be provided to the local enforcement official.

(C) New construction and substantial improvements. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which 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: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(2) Require the use of construction materials that are resistant to flood damage;

(3) Require the use of construction methods and practices that will minimize flood damage;

(4) Require that new structures be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(5) New structures be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(6) Assure that all manufactured homes shall be anchored to resist floatation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with state laws, local building codes, and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(A) Over-the-top ties be provided at each of the four corners of the manufactured home with two additional ties per side at the intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

(B) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;

(C) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(D) Any additions to manufactured homes be similarly anchored.

(7) Assure that all manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE 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 above one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of this division (d)(7).

(8) Assure that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's FIRM that are not subject to the provisions of this division (d)(8) be elevated so that either:

(A) The lowest floor of the manufactured home is at or above one foot 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 in accordance with the provisions of division (d)(6) above.

(9) Require that recreational vehicles placed on sites within the identified floodplain 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 and the elevation and 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. B-379, passed 1-8-1996)

The governing body of the city hereby designates the current flood insurance rate map (FIRM), for the city, adjacent areas on the county FIRM panel No. 225B, and amendments, as the official map to be used in determining those areas of special flood hazard.

(Ord. B-379, passed 1-8-1996)

#### § 16-306 PERMITS REQUIRED.

No person, firm, or corporation shall erect, construct, enlarge, or improve any building or structure or make other developments, as defined in the definitions section of this article, in the city, or cause the same to be done without first obtaining a separate development permit for each building or structure.

(a) Zone A. Within Zone(s) A on the official map, separate floodplain development permits are required for all new construction, substantial improvements, and other developments, including the placement of manufactured homes.

#### (B) Application.

(1) To obtain a floodplain development permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose.

(2) Every such application shall:

(A) Identify and describe the work to be covered by the floodplain development permit for which application is made;

(B) Describe the land on which the proposed work is to be done by lot, block, tract, and house and street address, or similar description that will readily identify and definitely locate the proposed building or work;

(C) Indicate the use or occupancy for which the proposed work is intended;

(D) Be accompanied by plans and specifications for proposed construction;

(E) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority;

(F) Within designated floodplain areas, be accompanied by elevations (in relation to a mean sea level) of the lowest floor (including basement) or in the case of flood-proofed nonresidential structures, the elevation to which it shall be flood-proofed. Documentation or certification of such elevations will be maintained by the City Superintendent; and

(G) Give such other information as reasonably may be required by the City Superintendent. (i.e., require a statement from the applicant that they are aware that elevating or flood-proofing structures above the minimum levels will result in premium reduction, especially in the case of nonresidential flood-proofing when a minus one foot penalty is assessed at the time of rating the structure for the policy premium.)



(Ord. B-379, passed 1-8-1996)

§ 16-307 NEW DEVELOPMENTS; MANUFACTURED HOMES AND SUBDIVISIONS.

The governing body of the city shall review all subdivision applications and other proposed new developments, including manufactured home parks or subdivisions, and shall make findings of fact and assure that:

(a) All such proposed developments are consistent with the need to minimize flood damage;

(b) Subdivision proposals and other proposed new developments (including proposals for manufactured home parks, and subdivisions), greater than five acres or 50 lots, whichever is lesser, include within such proposals regulatory flood elevation data in areas designated Zone A;

(c) Adequate drainage is provided to as to reduce exposure to flood hazards; and

(d) All public utilities and facilities are located so as to minimize or eliminate flood damage.

(Ord. B-379, passed 1-8-1996)

§ 16-308 NEW WATER AND SEWER.

New and replacement water and sewer systems shall be constructed to eliminate or minimize infiltration by, or discharge into floodwaters. Moreover, on-site waste disposal systems will be designed to avoid impairment or contamination during flooding.

(Ord. B-379, passed 1-8-1996)

§ 16-309 COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM.

The governing body of the city will ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. The city will notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency. Moreover, the city will work with appropriate state and federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Flood Disaster Protection Act of 1973.

(Ord. B-379, passed 1-8-1996)

§ 16-310 VARIANCE PROCEDURES.

(a) Generally. The Board of Zoning Appeals as established by the city shall hear and decide appeals and requests for variances from the requirements of this article.

(b) Appeals. 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.

(c) State law. Any person aggrieved by the decision of the Board of Zoning Appeals or any taxpayer may appeal such decision to the District Court having jurisdiction as provided in K.S.A. 12-714 and 12-715.

(d) Factors in passing applications. In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluation, all relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of 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 flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use to the comprehensive plan and floodplain management program for that area;
- (8) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (10) The 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, and streets and bridges.

(e) Conditions for variances.

(1) (A) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing divisions (e)(2) through (e)(6) below have been fully considered.

(B) As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- (2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures

listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

(3) Variances shall not be issued within any designated floodway if any increases 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/resolutions.

(6) Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. B-379, passed 1-8-1996)

#### § 16-311 NONCONFORMING USE.

(a) A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this article may be continued subject to the following conditions:

(1) If such use is discontinued for six consecutive months, any future use of the building premises shall conform to this article. The Utility Department shall notify the Zoning Administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of six months; or

(2) Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

(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 50% of the new market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this article. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(Ord. B-379, passed 1-8-1996)

#### § 16-312 ABROGATION AND GREATER RESTRICTIONS.

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

(Ord. B-379, passed 1-8-1996)

#### § 16-313 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. B-379, passed 1-8-1996)

#### § 16-314 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 human-made or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside floodplain district boundaries 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 or 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. B-379, passed 1-8-1996)

#### § 16-315 APPEAL.

Where a request for a permit to develop or a variance is denied by the Zoning Administrator, the applicant may apply for such permit or variance directly to the Board of Appeals.

(Ord. B-379, passed 1-8-1996)

#### § 16-316 AMENDMENTS; CONFLICTS.

(a) This article shall take precedence over conflicting ordinances or parts of ordinances.

(b) The governing body of the city may, from time to time, amend this article to reflect any and all changes in the National Flood Disaster Protection Act of 1973. The regulations of this article are in compliance with the National Flood Insurance Program regulations as published in Title 44 of the Code of Federal Regulations.

(Ord. B-379, passed 1-8-1996)

#### § 16-317 PENALTY.

(a) 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 grants of variances or special exceptions) 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 \$1,000, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(b) 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. B-379, passed 1-8-1996)

