

**Ordinance No. \_\_921\_\_\_\_ Summary**

On March 2, 2022, the City of Wellsville, Kansas, adopted Ordinance No. \_\_921\_\_ amending the City Zoning Regulations to update the City's floodplain regulations, as recommended by the Kansas Division of Water Resources. A Complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 411 Main Street, Wellsville, Kansas or at [www.wellsvilleks.citycode.net](http://www.wellsvilleks.citycode.net). This summary is certified by Patrick G. Reavey, Wellsville City Attorney pursuant to K.S.A. 12-3001, et seq.

**ORDINANCE NO. \_921\_\_\_\_\_**

**AN ORDINANCE AMENDING ARTICLE TEN OF THE CITY ZONING REGULATIONS TO UPDATE THE CITY'S FLOODPLAIN REGULATIONS**

**WHEREAS**, the Kansas Division of Water Resources of the Kansas Department of Agriculture has issued updated floodplain regulations for consideration and adoption by local governmental units; and

**WHEREAS**, City Staff has reviewed and incorporated these regulations into a proposed and revised Article Ten of the City Zoning Regulations to be adopted via the City's normal procedure for making text amendments to the City's Zoning Regulations; and

**WHEREAS**, the proposed and revised Article Ten set forth herein below has been reviewed and approved by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on \_\_February 9th\_\_\_\_, 2022; and

**WHEREAS**, the City Planning Commission has recommended that the proposed and revised Article Ten of the City Zoning Regulations be approved by the City governing body; and

**WHEREAS**, all newspaper notifications were performed and a public hearing was properly held before the City Planning Commission.

**NOW THEREFORE**, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WELLSVILLE, KANSAS:

**Section 1.** That the text of Article Ten of the Wellsville Zoning Regulations is hereby amended to read as follows:

**ARTICLE TEN – FLOODPLAIN OVERLAY DISTRICTS**

**18.1000 Purpose**

It is the purpose of this article to promote the public health, safety, and general welfare of the public; to minimize those losses described in subsection (B)(1) of section 18.1001 of this article; to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) § 59.22(a)(3); and to meet the requirements of 44 CFR § 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this article to:

- A. 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; and

- B. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- C. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard; and
- D. Prohibit the placement of fill, materials, and structures, which would obstruct flood flows and decrease the storage capacity of the regulatory floodway; and
- E. Require structures in the regulatory floodplain and public utilities vulnerable to floods are provided with flood protection at the initial construction stage; and
- F. Protect individuals from the purchase of lands rendered unsuitable for intended uses by their proximity to the regulatory flood elevation; and
- G. Minimize public expenditures for flood control projects and damage to public improvements within the regulatory floodplain; and
- H. Maintain property values adjacent to the floodplain and minimize flood blight areas; and
- I. Assure eligibility for property owners in the Federal Flood Insurance Program.

#### **18.1001 Statutory Authorization, Findings of Fact, and Purposes**

##### A. Statutory Authorization

- (1) 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. Therefore, the City Council of the City of Wellsville, Kansas ordains as follows:

##### B. Findings of Fact

###### (1) Flood Losses Resulting from Periodic Inundation

- (a) The flood-prone areas of the City of Wellsville, 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

###### (a) These flood losses are caused by:

- (1) The cumulative effect of development in any flood-prone areas causing increases in flood heights and velocities; and
- (2) The occupancy of flood-prone areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damage.

### (3) Methods Used To Analyze Flood Hazards

The Flood Insurance Study (FIS) that is the basis of this article uses a standard engineering method of analyzing flood hazards, which 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 article is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this article. 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 March 8, 2022, 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 flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

#### **18.1002 Lands to Which Article Applies**

This article shall apply to all lands within the jurisdiction of the City of Wellsville in Franklin County and Miami County, Kansas identified as numbered and unnumbered A Zones, AE, AO and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated March 8, 2022 as amended, and any future revisions thereto. In all areas covered by this article, no development shall be permitted except through the issuance of a floodplain development permit, granted by the city council 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 community, and as specifically noted in sections 18-1013-1018 of this article.

#### **18.1003 Compliance**

No development located within the flood-prone areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.

#### **18.1004 Abrogation and Greater Restrictions**

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

**18.1005 Interpretation**

- A. In the interpretation and application of this article the following items shall apply:
  - (1) The provisions of this article shall be held to be minimum requirements; and
  - (2) They shall be liberally construed in favor of the city governing body, and
  - (3) They shall not be deemed a limitation or repeal of any other powers granted by Kansas Statutes.

**18.1006 Warning and Disclaimer of Liability**

- A. 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.
- B. 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.
- C. This article does not imply that areas outside of flood-prone areas or land uses permitted within such areas will be free from flooding or damage.
- D. This article shall not create a liability on the part of the City of Wellsville, any officer or employee thereof, for any flood damages that may result from reliance on this article, or any administrative decision lawfully made thereunder.

**18.1007 Severability**

If any section, clause, provision, or portion of this article is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this article shall not be affected thereby.

**18.1008 Administration**

- A. These regulations are designed and intended to be administered in a manner which will:
  - (1) Restrict or prohibit uses dangerous because of water and erosion hazards or which will result in undue increases in erosion, flood heights, or velocities.
  - (2) Control grading (fill or evacuation), dredging, and development which unduly increase the potential for flood damage.

- (3) Require that uses protect private and public investments by requiring flood proofing.
  - (4) Control alteration of floodplains, stream channels and natural barriers, which accommodate or channel floodwaters.
  - (5) Prevent or regulate construction of barriers that unnaturally divert floodwaters or cause increased flood hazards. Construction in regulatory floodplains shall be directed to the outer limits of the floodway fringe before it is allowed to encroach further into the regulatory floodplain.
- B. A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured or mobile homes, in the areas described in section 18.1002 of this article. 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.

### **18.1009 Flood Insurance**

No part of this article or any regulation therein shall be construed as affecting the eligibility of any structure existing at the time of publication of the flood insurance rate maps.

### **18.1010 Designation of Floodplain Administrator**

A. The Planning Director is hereby appointed to administer the provisions of this article. It is the responsibility of the Planning Director to review all requests for floodplain development permits and to enforce the regulations in this section. Each permit request shall be reviewed in consideration of the following criteria:

- (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 article 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.
- (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 state-coordinating agency 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 maintenance is provided within the altered or relocated portion of any watercourse so that the flood-carrying capacity is not diminished.

- (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 non-residential structures have been floodproofed.
- (9) When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

#### **18.1011 Floodplain Development Permit**

A written application must be received at least 14 days prior to the approval of a development permit. A fee as set forth in the City Fee Resolution shall accompany the application. The application fee shall be made payable to the City of Wellsville and no part of the fee shall be returnable to the applicant after review of the permit request has begun

#### **18.1012 Floodplain Development Permit Application**

- A. Every floodplain development permit application shall have the following items included:
  - (1) A description of the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed building 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) Give such information as reasonably may be required by the Planning Director.
  - (6) Be accompanied by plans and specifications for proposed construction.
  - (7) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.

#### **18.1013 Provisions for Flood Hazard Reduction: General Standards**

A. No permit for floodplain development shall be granted for new construction, substantial improvements, and other improvements, including the placement of manufactured homes, within any flood-prone area unless the conditions of this section are satisfied.

B. All areas identified by the community pursuant to section 18-1002 of this article are subject to flooding; however, the depth and extent of the flood hazard has not been quantified. Within these flood-prone areas, the community shall obtain, review, and reasonably utilize any flood elevation or other relevant data currently available from Federal, State, or other sources.

C. 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 community.

D. All new construction, subdivision proposals, substantial-improvements, prefabricated buildings, placement of manufactured homes, and other developments shall require:

- (1) Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic loads, including the effects of buoyancy.
- (2) Construction with materials resistant to flood damage.
- (3) Utilization of methods and practices that minimize flood damages.
- (4) 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.
- (5) 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.
- (6) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
  - (a) All such proposals are consistent with the need to minimize flood damage.
  - (b) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage.
  - (c) Adequate drainage is provided so as to reduce exposure to flood hazards.
  - (d) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.
- (7) Storage, material, and equipment must adhere to the following standards:
  - (1) The storage or processing of material within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
  - (2) Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

E. Agricultural Structures

- (1) Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-flood proofed provided that there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; a variance has been granted from the floodplain management requirements of this article; and a floodplain development permit has been issued.

Any permit granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any permit issued for agricultural structures that are constructed at-grade and wet-floodproofed:

- a. All proposed agricultural structures shall demonstrate that no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
- b. Use of the structures must be limited to agricultural purposes in any special flood hazard area only as identified on the community's Flood Insurance Rate Map (FIRM).
- c. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with subsection D(2) of section 18-1013 of this article.
- d. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with subsection (D)(1) of section 18-1013 of this article. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- e. Any mechanical, electrical, or other utility equipment must be located (1) one foot above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with subsection (D)(4) of this article. The elevation shall be certified by a licensed land surveyor or professional engineer.
- f. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with subsection (A)(3) of section 18-1014 of this article.
- g. The agricultural structures must comply with the floodplain management floodway encroachment provisions of subsection b of section 18-1018 of this article. No permits may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
- h. Major equipment, machinery, or other contents must be protected from any flood damage.



- i. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.
- j. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

F. Nonconforming Use

In floodplains, a structure, or the use of a structure or premises that was lawful before the passage or amendment of this article, but which is not in conformity with the provisions of this regulation, may be continued subject to the following conditions:

- (1) If such structure, use, or utility service is discontinued for 6 consecutive months, any future use of the building shall conform to this article.
- (2) If any nonconforming use or structure is destroyed by any means, including flooding, it shall not be reconstructed if the cost is more than 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.

**18-1014 Provisions for Flood Hazard Reduction: Specific Standards**

- A. 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 section 18-1002, the following provisions are required:

1. *Residential Construction*

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

2. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below one foot above the base flood elevation 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. A registered professional engineer or architect shall verify 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 section 18.1010(A)(7)(8)(9) of this article.

3. *Enclosures Below Lowest Floor*

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 opening 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.

**18.1015 Provisions for Flood Hazard Reduction: Manufactured Homes**

A. All manufactured homes to be placed within flood-prone areas shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist 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.

B. Require manufactured or mobile homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:

- 1. Outside of a manufactured home park or subdivision;
- 2. In a new manufactured home park or subdivision;
- 3. In an expansion to an existing manufactured home park or subdivision; or
- 4. In an existing manufactured home park or subdivision on which a manufactured or mobile 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.

C. Require that manufactured or mobile homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of section 18.1015(B) of this article, be elevated so that:

1. The lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

#### **18.1016 Provisions for Flood Hazard Reduction: Recreational Vehicles**

- A. Recreational vehicles placed on sites within flood-prone areas shall adhere to the following:
  - (1) Be on the site for fewer than 180 consecutive days, and be fully licensed and ready for highway use; or
  - (2) Meet the permitting, elevating, and the anchoring requirements per the within regulations for manufactured homes.
- B. A recreational vehicle is considered ready for highway use if it is on its wheels or jacking system, and is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

#### **18.1017 Provisions for Flood Hazard Reduction: Areas of Shallow Flooding**

Located within the areas of special flood hazard as described in section 18-1002 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 or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
  - b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that 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 section 18-1014 of this article.

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

#### **18.1018 Provisions for Flood Hazard Reduction: Floodway**

Located within areas of special flood hazard established in section 18-1002 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:

- a. The community 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.
- b. The community 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 that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
- c. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.
- d. If section 18-1018(b) is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of sections 18-1013-18-1018.
- e. In unnumbered A zones, the community 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 section 18-1013(B).

#### **18.1019 Floodplain Management Variance Procedures**

A. The Board of Zoning Appeals shall hear and decide all variances from the requirements of this article and shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Director of the Planning Department in the enforcement or administration of this article.

B. Responsibility of the Board of Zoning Appeals.

- (1) Where an application for a floodplain development permit or request for a variance from the floodplain management regulations is denied by the floodplain administrator, the applicant may apply for such floodplain development permit or variance directly to the Board of Zoning Appeals.

- (2) 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 floodplain administrator in the enforcement or administration of this article.

C. Further Appeals

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

D. Variances: Floodplain Management Criteria

- (1) In passing upon such applications for variances, the BZA shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this regulation and the following criteria:
  - (a) The danger to life and property due to flood damage;
  - (b) The danger that materials may be swept onto other lands to the injury of others;
  - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage of the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location; where applicable;
  - (f) The availability of alternative locations, not subject to flood damage, for the proposed use;
  - (g) The compatibility of the proposed use with existing and anticipated development;
  - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and
  - (k) 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; streets; and bridges.

E. Variances: Floodplain Management Conditions for General Approval

- (1) Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that items (2) through (6) of this subsection E have been fully considered. As the lot size increases beyond the ½ acre, the technical justification required for issuing the variance increase.

- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the national Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon 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;
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (6) A community shall notify the applicant in writing, over the signature of a community official, that:
  - (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;
  - (b) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions.

F. Variances: Floodplain Management Conditions for Temporary Structures

- (1) Any variance granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances.
- (2) A temporary structure may be considered for location within the 100-year floodplain only when all of the following criteria are met:
  - (a) Use of a temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
  - (b) Denial of the temporary structure permit will create an undue hardship on the property owner;
  - (c) The community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and
  - (d) The community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.

- (3) Once all of the above conditions are met, an application for a Use Permitted Upon Review (UPR) permit must be made to the Wellsville City Council. The City Council shall consider all applications for special use permits for a temporary structure based on the following criteria:
  - (a) The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted Federal Emergency Management Agency/National Flood Insurance Program map shall require approval of a permit for a UPR. The UPR permit shall be valid for a period not to exceed 180 days.
  - (b) UPR permit applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.
  - (c) An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the UPR permit application for the placement of any temporary structure.
  - (d) On or before the expiration of the end of the 180-day UPR permit, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
  - (e) To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structure at all times.
  - (f) Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.
  - (g) Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.
  - (h) Violation of or non-compliance with any of the stated conditions of the special use permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body of the community. Issuance of permit revocation notice shall be made to the landowner, the occupant of the land and to the general public.
  - (i) Any deviation from the approved site plan shall be deemed a violation of the special use permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the UPR permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this article and shall be illegal, non-conforming uses and shall be summarily removed and abated.
- (4) If the temporary structure is to be returned to its previously occupied site, the process for issuing a UPR permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

The regulations, restrictions, and boundaries set forth in this article may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the local newspaper. At least 20 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Region VII office of the Federal Emergency Management Agency (FEMA). The regulation must be in compliance with the National Flood Insurance Program (NFIP) regulations.

#### **18.1021 Floodplain Management Violations**

A. The floodplain administrator may make reasonable entry upon any lands and waters in the City of Wellsville for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.

B. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.

C. The floodplain administrator shall provide written notice of a violation of this article to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.

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

E. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, if the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

F. If the public officer or an authorized assistant abates or removes the nuisance pursuant to this section, notice shall be provided to the owner, the owner's agent, lessee, or lessee's agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred. The notice shall also state that the payment is due within 30 days following receipt of the notice. The cost of providing notice, including any postage, required by this section may also be recovered.

G. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the



unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1617f).

## **18.1022 Floodplain Management: Definitions**

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

Actuarial Rates – See “risk premium rates”

Agricultural commodities – agricultural products and livestock.

Agricultural Structure – any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

Appeal – a request for review of the Floodplain Administrator’s interpretation of any provision of this regulation or a request for a variance.

Appurtenant Structure – a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

Area of Special Flood Hazard – the land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year.

Base Flood (100-year flood) – the flood having a 1% chance of being equaled or exceeded in any given year.

Base Flood Elevation means the elevation of the surface of the water during a one percent annual chance flood event.

Community – any State or area of political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

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

Elevated Building – 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.

Eligible Community or Participating Community – a community for which the Administrator has authorized the sale of flood insurance under the national Flood Insurance Program (NFIP).

Existing Construction – for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before the date. (“Existing construction” may also be referred to as “existing structures”)

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.

Expansion to an Existing Manufactured Park or Subdivision – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding – a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood Hazard Boundary Map (FHBM) – 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.

Flood Insurance Rate Map (FIRM) – an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Floodplain or Flood-prone Area – any land area susceptible of being inundated by water from any source (See flooding).

Floodplain Management – the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations – 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.

Flood Proofing – any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

Floodway or Regulatory Floodway – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Functionally Dependent Use – a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

Historic Structure – means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

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 flood proofing design requirements of this article.

Manufactured Home means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "*manufactured home*" does include mobile homes manufactured prior to 1976 but **does not include** a "*recreational vehicle*."

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.

Map – the Flood hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).

Mean Sea Level – 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.

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.

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.

Principally Above Ground – at least 51% of the actual cash value of the structure, less land value, is above ground.

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.

Recreational Vehicle – means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Remedy A Violation – 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.

Risk Premium Rates – those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. “Risk premium rates” include provisions for operating costs and allowances.

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

Start of Construction – includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

Structure – for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. “Structure” for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. 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.

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

Substantial-Improvement – 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 “start of construction” of the improvement. This term includes structures, which have incurred “substantial-damage,” regardless of the actual repair work performed. The term does not, anywhere, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Temporary Structure – 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.**

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

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 by this article is presumed to be in violation until such time as the documentation is provided.

**Section 2.** That the City Clerk and City Planning Staff are hereby authorized to make necessary changes to the City’s official records reflecting the above changes, and to make any changes throughout the text of the Zoning Regulations to properly reflect this amendment.

**Section 3.** This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

**Section 4.** Any ordinances or City code provisions in conflict with the foregoing are hereby repealed.

PASSED by the Governing Body of the City of Wellsville, Kansas, and approved by the Mayor on the 2<sup>nd</sup> day of March, 2022.

(Seal)

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Bill Lytle, Mayor

ATTEST:

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Tammy Jones, City Clerk

APPROVED AS TO FORM:

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Patrick G. Reavey, City Attorney