

ORDINANCE NO. 28512

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 17.08 OF TITLE 17 OF THE SAN JOSE
MUNICIPAL CODE TO UPDATE THE CITY'S SPECIAL
FLOOD HAZARD REGULATIONS**

WHEREAS, the Council of the City of San Jose desires to update its local flood hazard ordinance in the manner provided herein; and

WHEREAS, on February 2, 2009, this Ordinance was found to be categorically exempt from environmental review pursuant to the provisions of Section 15308 of the Guidelines to the California Environmental Quality Act of 1970, as amended, under File No. PP09-020.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE that Chapter 17.08 of Title 17 of the San José Municipal Code is amended in its entirety to be numbered, entitled, and to read as follows:

**CHAPTER 17.08
SPECIAL FLOOD HAZARD AREA REGULATIONS**

**Part 1
Title and Scope**

17.08.010 Short Title

This Chapter shall be known as the "San José special flood hazard area regulations," may be cited as such, and will be referred to herein as "this Chapter."

17.08.020 Authority

The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of San José does hereby adopt the following floodplain management regulations.

17.08.030 Findings

- A. The flood hazard areas of the City of San José are subject to periodic inundation which may result 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. Such flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to flood losses.

17.08.040 Purpose

The purpose of this Chapter is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within flood prone areas. This Chapter is intended to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;

- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

17.08.050 Methods of Reducing Flood Losses

In order to accomplish its purposes, this Chapter includes regulations to:

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- D. Control filling, grading, dredging, and other development which may increase flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

Part 2

Definitions

17.08.055 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

17.08.060 Accessory Structure

“Accessory structure” means a detached structure on the same parcel or site with, and of a nature customarily incidental and subordinate to, the main structure. This structure shall be used solely for parking (residential garages with gross floor area of 650 square feet or smaller) or limited storage (low-cost sheds with gross floor area of 200 square feet or smaller).

17.08.065 Administrator

“Administrator” means the federal insurance administrator, to whom the Secretary of the Interior has delegated the administration of the National Flood Insurance Program.

17.08.070 Base Flood or One Hundred Year Flood

"Base flood" or "one-hundred-year flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

17.08.075 Base Flood Elevation

"Base flood elevation" or "BFE" is the computed elevation to which the flood water is anticipated to rise during the base flood. This elevation is referenced to a vertical datum, such as the National Geodetic Vertical Datum of 1929 (NGVD29) or the North American Vertical Datum of 1988 (NAVD88).

17.08.080 Basement

"Basement" means any enclosed area of a structure having its lowest floor more than two (2) feet below grade level on all sides.

17.08.085 Biennial Report

"Biennial Report" means the report completed by communities participating in the National Flood Insurance Program that describes the community's progress in the previous two years in implementing floodplain management measures and on its needs for re-mapping and technical assistance. This report is submitted annually or biennially as determined by the Administrator.

17.08.088 Breakaway Walls

"Breakaway walls" are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural

integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

- A. Breakaway wall collapse shall result from a water load less than which would occur during the base flood; and
- B. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

17.08.090 Coastal High Hazard Area

“Coastal high hazard area” means the portion of a coastal flood area having special flood hazards that is subject to high velocity waters, including hurricane wave wash and tsunami. The area is designated on the Flood Insurance Rate Map (FIRM) as Zone V1-V30, VE, or V.

17.08.095 Conditional Letter Of Map Revision (CLOMR)

“Conditional letter of map revision (CLOMR)” means FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The CLOMR does not revise an effective NFIP map. The CLOMR indicates whether the project, if built as proposed, would be recognized by FEMA.

17.08.100 Crawlspace

“Crawlspace” means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawlspace having the lowest floor two (2) feet or less below grade level on all sides shall not be considered a basement.

17.08.105 Development

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, construction or modification of buildings or other structures, mining, dredging, trenching, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

17.08.110 Elevation Certification

“Elevation certification” means certification of lowest floor elevation as prescribed by the National Flood Insurance Program and this Chapter.

17.08.115 Flood, Flooding or Flood Water

“Flood”, “flooding”, or flood water means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, or other inland water, or abnormally high tidal water or rising coastal waters proximately caused by severe storms, hurricanes, or tsunamis. It also includes the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents exceeding anticipated cyclical levels.

17.08.120 Flood Boundary and Floodway Map (FBFM)

Flood Boundary and Floodway Map (FBFM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway for the City of San José.

17.08.125 Flood Hazard Boundary Map (FHBM) .

“Flood Hazard Boundary Map” (FHBM) means the most recent official map of the City of San José, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

17.08.130 Flood Insurance Rate Map (FIRM)

“Flood Insurance Rate Map” (FIRM) means the most recent official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the City of San José.

17.08.135 Flood Insurance Study (FIS)

Flood Insurance Study (FIS) means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

17.08.140 Floodplain Administrator

"Floodplain Administrator" is the community official designated by title to administer and enforce the floodplain management regulations. Unless otherwise specified in this

Chapter, Floodplain Administrator shall mean the Deputy Director of Public Works or his or her designee.

17.08.145 Floodplain Management

“Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

17.08.150 Floodplain Management Regulations

"Floodplain management regulations" means this Chapter, zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as geologic hazard, grading, and erosion control) and any other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations any combination thereof, which provide standards for preventing and reducing flood loss and damage.

17.08.155 Floodplain or Flood-Prone Area

“Floodplain” or “flood-prone area” means any land area susceptible to being inundated by water from any source.

17.08.160 Floodproofing

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to properties or structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, or their contents, including but

not limited to dry floodproofing and wet floodproofing as defined herein. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.

- A. “Dry floodproofing” means Floodproofing measures that are designed to prevent flood waters from entering a structure. Dry floodproofing techniques may include, but are not limited to, installation of closure and sealants, watertight walls, small floodwalls or levees, flood shields, and watertight doors.
- B. “Wet floodproofing” means Floodproofing measures that minimize damage to a structure and its contents from flood water that is allowed into the structure.

17.08.165 Highest Adjacent Grade

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

17.08.170 Historic Structure

“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;
or
- 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; or
- C. Individually listed on the State Inventory of Historic Places with the California Office of Historic Preservation; or

D. Individually listed in a City inventory of historic resources.

17.08.175 Letter of Map Revision (LOMR)

“Letter of map revision (LOMR)” means FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

17.08.180 Letter of Map Revision Based on Fill (LOMR-F)

A Letter of map revision based on fill (LOMR-F) means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

17.08.185 Lowest Floor

“Lowest Floor” means the lowest floor of the lowest enclosed area of a structure, including basement (see “Basement” definition). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or limited storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure meets the applicable non-elevation design requirements of subsections A.2. through A.6., inclusive, and A.10. of Section 17.08.620 of this Chapter.

17.08.190 Major Repairs

“Major repairs” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds twenty-five percent (25%) of the market value of the structure before any repair takes place.

17.08.195 Manufactured Home; Mobilehome

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. Manufactured home includes “Mobilehome” as defined in Section 788.3 of the California Civil Code, but does not include “recreational vehicle” as defined in Section 799.29 of the California Civil Code and Section 18010 of the California Health and Safety Code or “commercial coach” as defined in Section 18001.8 of the California Health and Safety Code.

17.08.200 Manufactured Home Park or Subdivision; Mobilehome Park

“Manufactured home park or subdivision” and “Mobilehome park” mean a parcel (or contiguous parcels) of land divided into two or more lots or sites for rent or sale, or that are held out for rent or sale, to accommodate manufactured homes or mobilehomes for human habitation.

17.08.205 Market Value

“Market value” means the current estimated fair market value of a structure, excluding the current estimated fair market value of the land on which the structure is located and the current estimated fair market value of any landscaping, and any detached accessory structures on such land. The current tax assessed value of the structure as provided by the County Tax Assessor’s office shall be used as the market value of the structure where the cost of the proposed improvement to the structure does not exceed forty percent

(40%). In the event the cost of the improvement to the structure exceeds forty percent (40%) of the current tax assessed value of the structure, the Floodplain Administrator shall estimate the market value or, in the alternative, market value shall be determined from an independent appraisal prepared by a qualified professional appraiser using a building cost estimating method recognized by the building construction industry, which shall be reviewed and accepted by the Floodplain Administrator.

17.08.210 Mean Sea Level

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum of 1929 (NGVD29), North American Vertical Datum of 1988 (NAVD88), or other datum, to which base flood elevations shown on the City of San José's Flood Insurance Rate Maps are referenced.

17.08.215 Mixed-Use Structure

"Mixed-use structure" means any structure that has only nonresidential uses in areas of the structure at or below the base flood elevation, but has residential uses in areas of the structure above the base flood elevation with access to residential uses Dry Floodproofed.

17.08.220 New Construction

"New construction", for the purposes of this Chapter, means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by the City of San José, and includes any subsequent improvements to such structures.

17.08.225 New Manufactured Home Park or Subdivision

“New manufactured home park or subdivision” means a Manufactured home park or subdivision, or a Mobilehome park, for which the construction of facilities for servicing the lot on which the manufactured home or mobilehome is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of floodplain management regulations adopted by the City of San José.

17.08.230 Official Map or Official Maps

“Official Map” means either the FBFM, FHBM or the FIRM. “Official Maps” means the FBFM, FHBM and the FIRM collectively.

17.08.235 Recreational Vehicle

“Recreational vehicle” means a vehicle which is:

- A. Built on a single chassis;
- B. Four Hundred (400) square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

17.08.240 Regulatory Floodway

“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.

17.08.245 Remedy a Violation

“Remedy a violation” means to bring the structure or other development into compliance with State or local floodplain management regulations; or, if this is not possible, the Floodplain Administrator may determine impossibility by applying the National Flood Insurance Program variance criteria/guidelines and require the applicant to reduce the impacts of noncompliance to the greatest extent possible in accordance with the National Flood Insurance Program and its implementing regulations. If such a variance is denied, the applicant may appeal to the Director of Public Works pursuant to Section 17.08.580. The manner in which impacts may be reduced include: protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this Chapter, otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

17.08.250 Repetitive Loss

“Repetitive loss” means flood-related damage sustained by a structure on two separate occasions during a ten (10)-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred.

17.08.255 Riverine

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

17.08.260 Special Flood Hazard Area

“Special flood hazard area” means an area in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year. It is shown on a FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V.

17.08.265 Start of Construction

“Start of construction” refers to the start of a substantial improvement or other proposed new development where the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within one hundred eighty (180) days from the date of issuance of the building permit therefor. For the purposes of this Section, the start of “substantial improvement” or “other proposes new development” mean (a) the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or (b) the placement of a manufacture home on a foundation; or (c) 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.

“Permanent construction,” for the purposes of this Section, does not include: (a) land preparation, such as clearing, grading, and filling; (b) the installation of streets and/or walkways; (c) excavation for a basement, footings, piers, or foundations or the erection of temporary forms; (d) 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.

17.08.270 Structure

“Structure” means:

- A. Any walled and roofed building that is principally above ground (including a manufactured home); and
- B. A gas or liquid storage tank that is principally above ground.

17.08.275 Substantial Damage

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to it’s before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

17.08. 280 Substantial Improvement

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. If multiple or phased improvements to a structure are involved, total costs shall include all cumulative costs for a consecutive five (5) year period prior to the start of construction of the most recent improvement. This term includes structures which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations or 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”.

17.08.285 Variance

“Variance” means a grant of relief from the requirements of this Chapter which permits construction in a manner that would otherwise be prohibited by this Chapter.

17.08.290 Violation

“Violation” means the failure of a structure or other development to be fully compliant with this Chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Chapter is presumed to be in violation until such time as that documentation is provided.

17.08.295 Water Surface Elevation

“Water surface elevation” means the heights, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, expected to be reached by floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

17.08.300 Watercourse

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Part 3
Designation of Flood Hazard Areas

17.08.400 Application of Chapter

The provisions of this Chapter apply to those areas of the City of San José designated on the Official Maps.

17.08.410 Use of Available Data

When base flood elevation data has not been provided, the Floodplain Administrator shall obtain, review, and reasonably utilize any authoritative base flood elevation data available from a federal, state or other source, in order to administer the provisions of Part 5, below.

17.08.420 Public Access

A copy of the Official Maps_and Flood Insurance Study shall be filed with the City Clerk and shall be available for use and examination by the public.

Part 4
General Provisions and Administration

17.08.500 Applicability of Special Flood Hazard Area Regulations

Nothing in this Chapter shall be construed to relieve any persons of requirements imposed by other sections of this code, except that the provisions of this Chapter relating to measures designed to reduce flood losses shall take precedence over any other provisions of this code which are in conflict.

17.08.510 Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the “Flood Insurance Study (FIS) for City of San José” dated August 2, 1982 with accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), dated August 2, 1982, and all subsequent amendments and/or revisions, including any digital forms, are hereby adopted by reference and declared to be a part of this Chapter. This FIS and attendant mapping is the minimum area of applicability of this Chapter and may be supplemented by studies for other areas which allow implementation of this Chapter and which are adopted by the City Council for this purpose. The study, FIRMs and FBFMs are on file at the Department of Public Works.

17.08.520 Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

17.08.530 Conflicts

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, in the event that any provision of this Chapter conflicts with another provision in this Code, any other law, or any easement, covenant, or deed restriction, the more restrictive provision for the purpose of flood protection shall apply.

17.08.540 Warning and Disclaimer of Liability

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of San José, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

17.08.550 Designation of the Floodplain Administrator

The Deputy Director of Public Works (and is or her designee) is hereby appointed to administer, implement and enforce this Chapter by granting or denying development permits in accord with its provisions.

17.08.560 Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

- A. Permit Review. Review all development permits to determine whether:
 - 1. Permit requirements of this Chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
 - 2. All other required state and federal permits have been obtained;

3. The site is reasonably safe from flooding; and
4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. This means 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 (1) foot at any point within the City of San José.

B. Development of Substantial Improvement and Substantial Damage Procedures.

1. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "Market Value;" and
2. Assure procedures are coordinated with other departments/divisions and implemented by Department of Public Works staff.

C. Review, Use and Development of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 17.08.510, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer Part 5. A base flood elevation may be obtained using one of two methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations", latest version.

D. Notification of Other Agencies.

1. Alteration or relocation of a watercourse:

- a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
 - b. Submit evidence of such notification to the Federal Emergency Management Agency; and
 - c. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
2. Base Flood Elevation changes due to physical alterations:
- a. Within six (6) months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a LOMR.
 - b. All LOMRs for flood control projects are approved prior to the issuance of building permits. Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.
- Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.
3. Changes in corporate boundaries: Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

- E. Documentation of Floodplain Development. Obtain and maintain for public inspection and make available as needed the following:
1. Certification required by Section 17.08.620 A.7. and Section 17.08.620 A.13. (lowest floor elevations);
 2. Certification required by Section 17.08.620 A.8. (elevation or floodproofing of nonresidential structures);
 3. Certification required by Section 17.08.620 A.10. (wet floodproofing standard);
 4. Certification of elevation required by Section 17.08.660 (subdivisions and other proposed development standards);
 5. Certification required by Section 17.08.640 D. (floodway encroachments); and
 6. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its Biennial Report submitted to the Federal Emergency Management Agency.
- F. Map Determination. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 17.08.580.
- G. Remedial Action. Take action to remedy violations of this Chapter as specified in Section 17.08.520.

- H. Biennial Report. Complete and submit Biennial Report to FEMA.
- I. Planning. Assure community's General Plan is consistent with floodplain management objectives herein.

17.08.570 Development Permit (Flood Clearance)

A development permit shall be obtained before any construction or other development, including manufactured homes, within any area of special flood hazard established in Section 17.08.510. Application for a development permit shall be made on forms furnished by the City of San José. The applicant shall provide the following minimum information:

- A. Plans drawn to scale showing:
 - 1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 - 2. Proposed locations of water supply, sanitary sewer, and other utilities;
 - 3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 - 4. Location of the regulatory floodway when applicable;
 - 5. Base flood elevation information as specified in Section 17.08.510 or Section 17.08.560.C;
 - 6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and

7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 17.08.620 A.8. of this Chapter and detailed in FEMA Technical Bulletin TB 3-93.
- B. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 17.08.620 A.8.
- C. For a crawlspace foundation, location and total net area of foundation openings as required in Section 17.08.620 A.11. of this Chapter and detailed in FEMA Technical Bulletins 1-93 and 7-93.
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- E. All appropriate certifications listed in Section 17.08.560.E. of this Chapter.

17.08.580 Appeals

The Director of Public Works shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter. Appeals shall be filed by the Applicant through a written notice of appeal with the Director of Public Works within ten (10) calendar days of the determination which is the cause for the appeal. The Applicant's notice of appeal shall contain all grounds for the appeal and shall include a statement of the specific facts and all documentation regarding the appeal. Unless the Applicant agrees to an extension of time, the Director of Public Works shall act on the appeal within forty (40) days after the appeal is filed. Before the Director of Public Works may take action on the appeal, the Director of Public Works may meet with the Applicant regarding the appeal. The Director of Public Works' determination on the appeal shall be in writing and shall be filed with the Floodplain Administrator in the Floodplain Administrator's office. At the time the Director of Public Works files the determination on

the appeal, the Director of Public Works shall mail notice thereof to the Applicant, and to all other persons who have requested in writing such notice for the particular appeal. The determination of the Director of Public Works shall be the final determination of the City with regard to the appeal.

Part 5
Requirements for Special Flood Hazard Area

17.08.600 Special Flood Hazard Area

The special flood hazard area shall consist of any land within the City identified on an official map of the City or the County of Santa Clara (prior to annexation) as a special flood hazard area, for which water elevation data for the one hundred-year flood is sufficient to identify the floodway or coastal high hazard area.

17.08.610 Major Repairs

The Floodplain Administrator shall review building permit applications for major repairs within the special flood hazard area. No flood clearance for a building permit shall be issued unless the Floodplain Administrator determines that the proposed repair (a) uses construction materials and utility equipment that are resistant to flood damage, and (b) uses construction methods and practices that will minimize flood damage. The applicant for a permit hereunder shall present drawings, plans, specifications and any other data or information which the Floodplain Administrator may require.

17.08.620 New Construction or Substantial Improvements

- A. The Floodplain Administrator shall review all building permit applications for new construction or substantial improvements of structures within the special flood hazard area. No flood clearance for a building permit shall be issued unless the Floodplain Administrator determines that the proposed construction, repair,

reconstruction or improvement, including manufactured homes, if any are permitted, pursuant to Titles 19 and 20 of this Code meets all of the following requirements:

1. Is protected against flood damage;
2. Is adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic or hydrostatic loads, including the effect of buoyancy;
3. Uses construction materials and utility equipment that are resistant to flood damage;
4. Uses construction methods and practices that will minimize flood damage;
5. Uses 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. If within Zones AH or AO as shown on the FIRM, has adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures;
7. Residential Construction. Excepting residential construction in Zone A99, all new construction of any residential structure or substantial improvements of such a residential structure shall have the lowest floor, including basement, comply with all the requirements of subsections A.1. through A.6. of this Section and the requirements of the applicable flood hazard zone in subsections A.7.a. and A.7.b. below. For residential structures, attached garages may be built at grade provided that such

garages also meet the design requirements of subsection A.10. of this Section. All subgrade enclosed areas (except crawlspaces) are considered to be basements and are prohibited in residential structures. This prohibition includes below-grade parking garages and below-grade storage areas.

- a. Zone AO. Elevated to or above the depth number specified on the FIRM. If there is no depth number on the FIRM, the lowest floor, including basement, shall be elevated two (2) feet above the highest adjacent grade. Upon completion of the structure, the Floodplain Administrator or a registered professional engineer or surveyor shall certify that the structure is elevated as set forth in this subparagraph and, if certified by a professional engineer or surveyor, shall provide such certification to the Floodplain Administrator as set forth in Section 17.08.560.
 - b. Zones A, A1-A30, AE or AH. Elevated to or above the base flood elevation specified on the FIRM or the best available data as defined in Section 17.08.210 when base flood elevation has not been provided. Upon completion of the structure, the elevation on the required vertical datum showing the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator as set forth in Section 17.08.560.
8. Nonresidential and Mixed-use Construction. Excepting nonresidential and mixed-use construction in Zone A99, all new construction of any nonresidential or mixed-use structure or substantial improvements of such structures shall comply with all the requirements of subsections A.1. through A.6. above and be in conformance with the elevation requirements

of the applicable flood hazard zone or the alternative flood hazard requirement as specified below:

- a. Zone AO. Elevated to or above the depth number specified on the FIRM. If there is no depth number on the FIRM, the lowest floor, including basement, shall be elevated two (2) feet above the highest adjacent grade. Access to residential uses of mixed use structures shall be dry floodproofed. Upon completion of the structure, the Floodplain Administrator or a registered professional engineer or surveyor shall certify that the structure is elevated as set forth in this subparagraph and, if certified by a professional engineer or surveyor, shall provide such certification to the Floodplain Administrator as set forth in Section 17.08.560.

- b. Zones A, A1-A30, AE or AH. Elevated to or above the base flood elevation specified on the FIRM or the best available data as defined in Section 17.08.410 when base flood elevation has not been provided. Access to residential uses of mixed use structures shall be dry floodproofed. Upon completion of the structure, the elevation on the required vertical datum showing the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator as set forth in Section 17.08.560.

- c. Alternative Flood Hazard Requirement. With attendant utility and sanitary facilities:
 - (1) Be dry floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 17.08.560;
9. Zone A99 Construction. The Zone A99 flood hazard areas are designated by a Federal Emergency Management Agency (FEMA) Letter of Map Revision. These areas have received additional flood protection due to the construction of improvements such as dikes, dams or levees. No base flood elevation has been designated for Zone A99. The requirements of subsections A.1. through A.5. of this Section and Section 17.08.640 do not apply to the Zone A99 flood hazard area. For new construction and substantial improvements in Zone A99, the permit applicant shall be provided a written notice of the flood risk in a form acceptable to the City Attorney. All property owners shall acknowledge the receipt of the written notice and acknowledge in writing that they do not elect to voluntarily comply with the requirements of subsections A.1. through A.5. of this Section and Section 17.08.640.
10. Enclosed Areas Below the Lowest Floor. All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or limited storage, and which are subject to flooding, shall be designed to provide wet floodproofing and shall automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following minimum criteria:

- a. Be certified by a registered professional engineer or architect; or
 - b. Have a minimum of two (2) openings having a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
11. Crawlspace Construction. All crawlspaces shall comply with all the requirements of subsections A.2. through A.5. of this Section and the design requirements of subsection A.10. of this Section. Below-grade crawlspaces for new construction and substantial improvements shall be designed and certified by a registered professional engineer to meet the following additional requirements:
- a. The interior grade of the crawlspace below the base flood elevation must not be more than two (2) feet below the lowest adjacent exterior grade;
 - b. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point;
 - c. The velocity of floodwaters at the parcel or site should not exceed five (5) feet per second;
 - d. There must be an adequate drainage system that removes floodwaters from the enclosed interior area of the crawlspace within a reasonable amount of time, not to exceed seventy-two (72) hours after the end of a flood event. The drainage system may include

natural drainage through porous, well-drained soils, or drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.

- e. Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements. However, applicants who construct structures that have below-grade crawlspaces are hereby advised that such structures will have higher flood insurance premiums than structures that have crawlspaces with interior elevations at or above the lowest adjacent exterior grade.

- 12. Accessory Structures. An exemption to the elevation or dry floodproofing standards may be granted for accessory structures used solely for parking (residential garages with gross floor area of six hundred fifty (650) square feet or smaller) or limited storage (low-cost sheds with gross floor area of two hundred (200) square feet or smaller). Such structures shall not be used for human habitation and must meet the requirements of subsections A.2. through A.6., inclusive, the design requirements of subsection A.10. of this Section, and the encroachment provisions of subsection D of Section 17.08.640. Portions of the structure with uses other than parking and limited storage must meet the elevation requirements of the applicable special flood hazard zone in subsection A.7. of this Section.
- 13. Manufactured Homes. Manufactured homes shall meet the above standards and also the standards in Sections 17.08.640 and 17.08.650.
- 14. Coastal High Hazard Areas. Within coastal high hazard areas, Zone V, V1-V30, and VE, as established under Section 17.08.510, the following standards shall apply:

- a. All new residential and non-residential construction, including substantial improvement/damage, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.
- b. All new construction and other development shall be located on the landward side of the reach of mean high tide.
- c. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Part 2 of this ordinance. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.
- d. Fill shall not be used for structural support for buildings.
- e. Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- f. The Floodplain Administrator shall obtain and maintain the following records:

- (1) Certification by a registered engineer or architect that a proposed structure complies with Section 17.08.620.A.14.a.; and
 - (2) The elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether structures contain a basement.
- B. In making said determination, the Floodplain Administrator shall review and reasonably utilize any base flood elevation data available, principally the FIRM, which has been provided by the administrator. The applicant for a permit hereunder shall present drawings, plans, specifications, a certificate of elevation, and any other data or information which the Floodplain Administrator may require.

17.08.630 Standards for Utilities

All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

17.08.640 New Developments

- A. The Floodplain Administrator shall review subdivision applications and other proposed new development applications in the special flood hazard area to assure that:
1. All such applications are consistent with the need to minimize flood damage;

2. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage; and
 3. Adequate drainage is provided so as to reduce exposure to flood hazards. Such subdivision applications and other proposed new development applications shall include base flood elevation data available from federal, state and local sources.
- B. The Floodplain Administrator shall require that all manufactured homes to be placed within such special flood hazard areas be anchored to resist flotation, collapse or lateral movement by providing over-the-top or frame ties to ground anchors. Specific requirements shall be determined by the Floodplain Administrator, and shall include an elevation certificate, but in no way are to be of lesser magnitude than those specified in the federal insurance administration's National Flood Insurance Program revised regulations (44 C.F.R. Part 60). Pursuant to state law, certification meeting the standards above is required of the local enforcement agency responsible for regulating the placement, installation and anchoring of individual manufactured home units.
- C. The Floodplain Administrator shall require that until a floodway is designated by the Administrator, no new construction, subdivision, improvement or other development, including fill, shall be permitted within a special flood hazard area on the community 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. The Floodplain Administrator shall prohibit encroachments, including fill, new construction, substantial improvement, and other development within designated

floodways unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

17.08.650 Mobilehome Parks and Mobilehome Subdivisions

The Floodplain Administrator shall review building permit applications for manufactured home parks and subdivisions. The following standards, in addition to those set forth in Title 25, Chapter 2 of the California Code of Regulations, are required for: (a) manufactured homes not placed in manufactured home parks or subdivisions, (b) new manufactured home parks or subdivisions, (c) expansions to existing manufactured home parks or subdivisions and, (d) repair, reconstruction, or improvements to existing manufactured home parks or subdivisions that equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced. No flood clearance for a building permit shall be issued unless the Floodplain Administrator determines all of the following:

- A. Adequate surface drainage and access for a refuse hauler shall be provided;
- B. All manufactured homes shall be placed on pads or lots elevated on compacted fill or on pilings so that the lowest floor of the manufactured home is at or above the base flood level. If elevated on pilings:
 - 1. The lots shall be large enough to permit steps;
 - 2. The pilings shall be placed in stable soil no more than ten (10) feet apart;
and
 - 3. Reinforcement shall be provided for pilings more than six (6) feet above the ground level;

- C. No manufactured homes shall be placed within a regulatory floodway except in existing manufactured home parks and subdivisions pursuant to regulations promulgated by the Federal Emergency Management Agency (Title 44, Emergency Management and Assistance Section 60.3, subsection (d) 4).

17.08.660 Standards for Subdivisions

All subdivision applications shall identify the flood hazard area and the elevation of the base flood. All new subdivision applications (including applications for manufactured home parks and subdivisions) within Zone A which create more than fifty (50) parcels or sites, or involve more than five (5) acres of land, whichever is less, shall provide base flood elevation data to the Floodplain Administrator. All final subdivision plans shall identify the location and provide the elevation of proposed structure(s) and pad(s). If the parcel or site is filled above the base flood elevation, the lowest floor, pad elevation, and lowest adjacent grade shall be certified by a registered professional engineer or surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator. All subdivision applications shall be consistent with the need to minimize flood damage. All subdivision applications shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage. All subdivision applications shall have adequate drainage provided to reduce exposure to flood damage as set forth in Section 17.08.640.

17.08.665 Standards for Recreational Vehicles

- A. All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE will either:
1. Be on the site for fewer than 180 consecutive days; or
 2. Be fully licensed and ready for highway use. 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; or

3. Meet the permit requirements of Section 17.08.570 of this ordinance and the elevations and anchoring requirements for manufactured homes in Section 17.08.640.

- B. Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's Flood Insurance Rate Map will meet the requirements of Section 17.08.665.A and Section 17.08.620.A.14.

17.08.670 Compliance with Federal or State Law

All ministerial and discretionary permits issued by the City of San José for major repairs, new construction, substantial improvements, and new development shall be reviewed by the appropriate departmental official to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 (as amended) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

Part 6 Variances

17.08.680 Variances

Pursuant to and in accordance with the provisions of this Part, the Floodplain Administrator may, but shall not under any circumstances be required to, grant a variance from the regulations and provisions of this Chapter.

17.08.690 Variances, Petitions for - Form Of Such Petition - Where Filed, and Requisites Before Floodplain Administrator May Accept for Filing

Petitions for variances shall be filed in writing with the Floodplain Administrator on a form furnished by the Floodplain Administrator. The form of the petition and the information and data required to be set forth therein shall be as prescribed by the Floodplain Administrator. The Floodplain Administrator shall not accept any such petition for filing unless:

- A. All information and data are set forth and shown as required by the form, to include elevation certification on N.G.V.D. datum;
- B. The petition is verified;
- C. The petition shall be signed by all of the owners (or the agents of the owners) of the parcel or site; and
- D. The filing fee required by Section 17.08.790 has been paid;
- E. Applicant shall supply all documents and data necessary, including but not limited to any applicable subdivision or development application and supporting documents, for Floodplain Administrator to evaluate variance application at no cost to City.

17.08.700 Investigation and Hearing by Floodplain Administrator

The Floodplain Administrator shall conduct an investigation on each petition accepted for filing. Each such investigation shall include an opportunity for the petitioner to appear before and be heard by the Floodplain Administrator. The Floodplain Administrator shall not act on any petition unless the Floodplain Administrator has given the petitioner an opportunity to be heard thereon. Notice of the time and place at which the petitioner may

appear before the Floodplain Administrator and be heard shall be given by mailing to him, postage prepaid, at the address shown on his petition, at least seven days before the date on which he will be heard. The form of such notice shall be as prescribed by the Floodplain Administrator.

17.08.710 By Whom Issued - No Right to Issuance

Pursuant to and in accordance with the provisions of this Part, the Floodplain Administrator may issue variance permits. Under no circumstances shall any petitioner have the right to have a variance permit issued for the parcel or site included in the petition; and nothing contained in this Part shall, in any event or under any circumstances, be deemed or construed to confer on any petitioner the right to have a variance permit issued for such parcel or site.

17.08.720 Action by Floodplain Administrator

In taking action, the Floodplain Administrator may deny the petition or issue a variance permit for the parcel or site covered by the petition. The Floodplain Administrator may make any variance permit which the Floodplain Administrator may issue subject to such terms, provisions and conditions as the Floodplain Administrator may deem reasonably necessary to secure the general purposes of this Chapter.

17.08.730 Findings Required for Issuance of Variance Permit

- A. The Floodplain Administrator shall not issue a variance permit for such parcel or site unless the Floodplain Administrator makes all of the following findings upon the issuance of the variance permit including all conditions thereto:
 - 1. Will not result in any increase in flood levels during the base flood discharge within any designated regulatory floodway;

2. That the failure to grant the variance will result in exceptional hardship to the petitioner. Exceptional hardship includes those matters that are exceptional, unusual or peculiar to the site or parcel that is the subject of the application for variance to the extent that the site or parcel cannot be developed for any viable use without a variance. Exceptional hardship does not include any of the following:
 - a. economic or financial hardship to the applicant in complying with the regulations and provisions of this Chapter,
 - b. requiring the property owner to build elsewhere,
 - c. requiring a different use of the parcel than intended in the application by the property owner,
 - d. inconvenience to the property owner,
 - e. aesthetic considerations,
 - f. personal preferences or disapproval of the property owner or neighboring property owners.
3. Will not result in increased flood heights, additional threats to public health or safety, damage to the property of another, additional public expense; create a nuisance; cause fraud on or victimization of the public; or conflict with existing City ordinances; and
4. Is the minimum variance from the regulations and provision of this Chapter necessary to afford relief.

- B. Under no circumstances shall any petitioner have the right to have a variance permit issued for any such parcel or site, and nothing contained in the preceding paragraph of this Section shall in any event or under any circumstances be deemed or construed to confer upon any petitioner the right to have a variance permit issued for such parcel or site.

17.08.740 Petition - Time for Floodplain Administrator's Action - Hearing Required

Unless the petitioner agrees to an extension of time, the Floodplain Administrator shall act on his petition within forty (40) days after the petition was filed. Before the Floodplain Administrator may take action on the petition, the Floodplain Administrator must conduct at least one (1) hearing on the matter. The Floodplain Administrator may, before taking action, conduct more than one (1) hearing. Any action taken by the Floodplain Administrator shall be in writing and shall be filed in the Floodplain Administrator's office. At the time the Floodplain Administrator files the same, the Floodplain Administrator shall mail notice thereof to the petitioner, and to all other persons who have requested in writing such notice. A separate written request for notice must be filed for each proceeding. Once the Floodplain Administrator has taken action, the Floodplain Administrator shall not (in the same proceeding) reconsider his or her action.

If the Floodplain Administrator fails to take action within the forty (40)-day period above provided, or within such extension of time as may have been agreed to by the petitioner, the Floodplain Administrator shall not thereafter take action, and the petition shall be deemed denied.

17.08.750 Hearings

The Floodplain Administrator shall set the date for all hearings conducted under this Part.

17.08.760 Notification to Petitioner

Any variance permit issued pursuant to the provisions of this Part, which authorizes the construction of a structure below the base flood level, shall notify the permittee of the following:

- A. The issuance of the variance permit to construct a structure below the base flood level will likely result in increased premium rates for flood insurance; and
- B. Such construction below the base flood level increases health and safety risks to life and property upon the parcel or site that is the subject of the variance.

17.08.770 Variance Permit, Recordkeeping and Report Required

The Floodplain Administrator shall forward a copy of each variance permit issued, pursuant to the provisions of this part, to the City Clerk and shall cause a certified copy of such permit to be recorded in the office of the county recorder of the county of Santa Clara. Each such variance permit shall be reported to the federal insurance administrator by the Floodplain Administrator as a part of the annual report submitted to such administrator by the City.

17.08.780 Filing Fees For Petitions

The petition for a variance permit shall be as set forth in the schedule of fees established by resolution of council. Said fees are required to defray City's cost and expense in conducting the proceedings following such filing.

17.08.790 Effective Date of Variance Permit

No variance permit shall become effective unless and until the permittee, in writing, on a form which shall have been provided by the City and which shall have been signed and acknowledged by such permittee:

- A. Has accepted the variance permit with required notarized signatures from all property owners or their legal representatives; and
- B. Has agreed to be bound, and to do all the things required of him or her, as required by the terms, provisions and conditions of such permit, and the provisions of this Chapter applicable to such permit.
- C. Has paid in advance the City's recordation costs that are in addition to the filing fees required in Section 17.08.790.
- D. Shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City, advisory agency, appeal board, or legislative body concerning the variance. The City shall promptly notify the permittee of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event the City fails to promptly notify the permittee of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this Section prohibits the City from participating in the defense of any claim, action, or proceeding if City bears its own attorney's fees and costs and defends the action in good faith. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the permittee.

17.08.800 Warning and Disclaimer of Liability

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of San José, any officer or employee thereof, or the federal insurance administration, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

PASSED FOR PUBLICATION of title this 17TH day of March, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, HERRERA, LICCARDO, NGUYEN,
OLIVERIO, PYLE, REED.

NOES: NON.E

ABSENT: CHU, CONSTANT, KALRA.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk