

ORDINANCE NO. 2013.52

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA, AMENDING
CHAPTER 12, ARTICLE II, TEMPE CITY CODE,
RELATING TO FLOODPLAIN MANAGEMENT.**

WHEREAS, Arizona Revised Statutes, Section 48-3610, authorizes cities to adopt regulations in conformance with Section 48-3609, designed to promote the public health, safety, and the general welfare of its citizenry;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 12, Article II, Section 12-16 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-16. Purpose.

(a) The flood hazard areas of Tempe are subject to periodic inundation which can 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) These flood losses MAY BE ~~are~~ caused by the cumulative effect of obstructions in areas of special flood HAZARDS ~~hazard~~ which increase flood heights and velocities, and, when inadequately anchored, CAUSE damage ~~uses~~ in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(c) It is the purpose of this article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood-control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To 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;
- (6) To help maintain a stable tax base by providing for the SOUND ~~second~~ use and development of areas of special flood hazard so as to minimize ~~future flood~~ blight areas CAUSED BY FLOODING;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
- (9) To maintain eligibility for ~~state~~ disaster relief.

Section 2. That Chapter 12, Article II, Section 12-17 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-17. Methods of reducing flood losses.

(a) In order to accomplish its purposes, this article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Controlling filling, grading, dredging and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(b) THIS ARTICLE TAKES PRECEDENCE OVER ANY LESS RESTRICTIVE, CONFLICTING LOCAL LAWS, ORDINANCES AND CODES.

Section 3. That Chapter 12, Article II, Section 12-18 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-18. Definitions.

Unless specifically defined below, 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:

ACCESSORY STRUCTURE MEANS A STRUCTURE THAT IS (i) SOLELY USED FOR THE PARKING OF NO MORE THAN TWO CARS OR LIMITED STORAGE (SMALL, LOW COST SHEDS); AND (ii) NO MORE THAN 400 SQUARE FEET IN FLOOR AREA.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article.

Area of shallow flooding means a designated AO OR AH Zone on TEMPE'S ~~the~~ flood insurance rate map (FIRM) WITH A ONE PERCENT OR GREATER ANNUAL CHANCE OF FLOODING TO AN AVERAGE DEPTH OF ~~The base flood depths range from~~ one to three (3) feet WHERE; a clearly defined channel does not exist, WHERE the path of flooding is unpredictable ~~and indeterminate~~, and WHERE velocity flow may be evident. SUCH FLOODING IS CHARACTERIZED BY PONDING OR SHEET FLOW.

Base flood OR 100-YEAR FLOOD means ~~A~~ the flood having a one percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION OR BFE MEANS THE ELEVATION SHOWN ON THE FLOOD INSURANCE RATE MAP FOR ZONES AE, AH, A1-30, VE, AND V1-V30 THAT INDICATES THE WATER SURFACE ELEVATION RESULTING FROM A FLOOD THAT HAS A ONE PERCENT OR GREATER CHANCE OF BEING EQUALED OR EXCEEDED IN ANY GIVEN YEAR.

BASEMENT MEANS ANY AREA OF THE BUILDING HAVING ITS FLOOR SUBGRADE (BELOW GROUND LEVEL) ON ALL SIDES.

~~*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building supporting foundation system.~~

~~*Critical feature* means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.~~

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

~~*Financial assistance* means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance, other than general or special revenue sharing or formula grants made to states.~~

FEMA MEANS THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of flood water; the unusual and rapid accumulation or runoff of surface waters from any source; or the collapse or subsidence of land along the shore of a body of water as a result of an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

Flood boundary AND floodway map OR FBFM means the official map on which FEMA OR the Federal Insurance Administration has delineated both the areas of SPECIAL flood HAZARDS ~~hazard~~ and the floodway.

Flood insurance rate map (FIRM) means the official map on which FEMA OR the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to TEMPE ~~the community~~.

Flood insurance study means the official report provided by FEMA ~~the Federal Insurance Administration~~ that includes flood profiles, the FIRM, the flood boundary AND floodway MAPS ~~map~~, and the water surface elevation of the base flood.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

Floodplain administrator means the city engineer of the city who is hereby authorized by the floodplain board to administer the provisions of this article.

Floodplain board means the city council of the city at such times as they are engaged in the enforcement of this article.

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 and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances and erosion control ordinances) and other applications of police power. The term describes such FEDERAL, state, or local regulations in any combination thereof which provide standards for the purpose of flood damage prevention and reduction.

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

~~*Flood protection system* means those physical structural works for which funds have been authorized, appropriated and expended, and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.~~

Flood-related erosion means the collapse or subsidence of land along a body of water as a result of an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

Floodway OR REGULATORY FLOODWAY means the channel of a river or other watercourse and the adjacent land areas THAT MUST BE RESERVED necessary in order to discharge the 100-year flood without cumulatively increasing the water surface elevation MORE THAN A DESIGNATED HEIGHT.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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

Historic structure means a structure listed on the National Register of Historic Places or in a state or local inventory of historic places.

~~*Levee* means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.~~

~~*Levee system* means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.~~

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

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 connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, NORTH AMERICAN VERTICAL DATUM (NAVD) OF 1988, or other datum to which base flood elevations shown on TEMPE'S ~~a community's~~ flood insurance rate map 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 ~~for~~ floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by TEMPE ~~a community~~ and includes any subsequent improvements to such structures.

Person means an individual or his agent, a firm, partnership, association or corporation or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

~~*Program* means the National Flood Insurance Program authorized by 42 U.S.C. §§ 4001—4128.~~

~~*Program deficiency* means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the NFIP standards.~~

Recreational vehicle means a vehicle which is (1) built on a single chassis, (2) four hundred (400) square feet or less when measured at the largest horizontal projection, (3) designed to be self-propelled or permanently towable by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulatory flood-elevation means an elevation one foot above the base flood elevation FOR A WATERCOURSE FOR WHICH THE BASE FLOOD ELEVATION HAS BEEN DETERMINED AND SHALL BE DETERMINED BY THE CRITERIA DEVELOPED BY THE DIRECTOR OF THE ARIZONA DEPARTMENT WATER RESOURCES FOR ALL OTHER WATERCOURSES indicated on the FIRM. For example, buildings in Zone "AO (one foot depth)" are required to have the lowest floor two (2) feet higher than the highest adjacent grade.

~~*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, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.~~

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

Special flood hazard area OR AREA OF SPECIAL FLOOD HAZARD means an area IN THE FLOODPLAIN SUBJECT TO A ONE PERCENT OR GREATER CHANCE OF FLOODING IN ANY GIVEN YEAR. ~~having special flood or flood-related erosion hazards, and~~ IT IS shown on an FBFM FFBM or FIRM as Zone A, AO, A1-A30, AE, A99 or AH.

Start of construction includes substantial improvement AND OTHER PROPOSED NEW DEVELOPMENT, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (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 or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets AND/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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

Substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement 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. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by 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".

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

Violation means the failure of a structure or other development to be fully compliant with TEMPE'S ~~the community's~~ floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION MEANS THE HEIGHT, IN RELATION TO THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929, NORTH AMERICAN VERTICAL DATUM (NAVD) OF 1988, OR OTHER DATUM, OF FLOODS OF VARIOUS MAGNITUDES AND FREQUENCIES IN THE FLOODPLAINS OF COASTAL OR RIVERINE AREAS.

WATERCOURSE MEANS A LAKE, RIVER, CREEK, STREAM, WASH, ARROYO, CHANNEL, OR OTHER TOPOGRAPHIC FEATURE ON OR OVER WHICH WATER FLOWS AT LEAST PERIODICALLY. WATERCOURSE INCLUDES SPECIFICALLY DESIGNATED AREAS IN WHICH SUBSTANTIAL FLOOD DAMAGE MAY OCCUR.

Section 4. That Chapter 12, Article II, Section 12-20 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-20. Basis for establishing the areas of special flood hazard.

The area of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "The Flood Insurance Study for Maricopa County and Incorporated areas" dated July

19, 2001, with an accompanying flood insurance rate map and all subsequent amendments or revisions are adopted by reference and declared to be a part of this article. The flood insurance study and the flood insurance rate maps are on file at the city engineering office IN THE CITY HALL COMPLEX AT 31 E. FIFTH STREET. The flood insurance study AND THE ATTENDANT MAPPING ARE is the minimum area of applicability of this article and may be supplemented by studies for other areas which allow implementation of this article and which are recommended to the floodplain board by the floodplain administrator. The floodplain board, within its area of jurisdiction shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the director of water resources.

Section 5. That Chapter 12, Article II, Section 12-23 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-23. Warning and disclaimer of liability.

The degree of flood protection required by this article 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 article 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 article shall not create liability on the part of the city, any officer or employee thereof, THE STATE OF ARIZONA, or FEMA ~~the Federal Insurance Administration~~ for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Section 6. That Chapter 12, Article II, Section 12-24 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-24. Statutory EXCEPTIONS ~~exemptions~~.

(a) In accordance with A.R.S. § 48-3609, nothing in this article shall:

- (1) Affect existing LEGAL uses of property or the right to continuation of SUCH LEGAL ~~the~~ use under conditions which existed on the effective date of this article;
- (2) Affect repair or alteration of property for the purposes for which such property was LEGALLY used on the effective date of this article; providing such repair or alteration does

not exceed fifty percent (50%) of the value of the property prior to the repair or alteration; and provided the repair or alteration does not decrease the carrying capacity of the watercourse; or

- (3) Affect or apply to facilities constructed or installed pursuant to a certificate or environmental compatibility issued under the authority of Title 40, Chapter 2, Article 6.2 OF THE ARIZONA REVISED STATUTES.

(b) In accordance with A.R.S. § 48-3613, written authorization shall not be required, nor shall the floodplain board PROHIBIT ~~prohibits~~:

- (1) The construction of bridges, culverts, dikes, and other structures necessary FOR ~~to~~ the construction of public highways, roads and streets intersecting a watercourse;
- (2) The construction of structures on banks of a ~~creek, stream, river, wash, arroyo or other~~ watercourse to prevent erosion of or damage to adjoining land IF THE STRUCTURE WILL NOT DIVERT, RETARD, OR OBSTRUCT THE NATURAL CHANNEL OF THE WATERCOURSE, or dams for the conservation of floodwaters as permitted by Title 45 ~~48~~, Chapter 6 ~~21~~ OF THE ARIZONA REVISED STATUTES;
- (3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in any watercourse; ~~or~~
- (4) Any flood-control district, or other political subdivision, from exercising powers granted to it under Title 48 ~~45~~, Chapter 21 ~~40~~, ARTICLE 1, Arizona Revised Statutes; -
- (5) THE CONSTRUCTION OF STREAMS, WATERWAYS, LAKES, AND OTHER AUXILIARY FACILITIES IN CONJUNCTION WITH DEVELOPMENT OF PUBLIC PARKS AND RECREATION FACILITIES BY A PUBLIC AGENCY OR POLITICAL SUBDIVISION; OR
- (6) THE CONSTRUCTION AND ERECTION OF POLES, TOWERS, FOUNDATIONS, SUPPORT STRUCTURES,

GUY WIRES, AND OTHER FACILITIES RELATED TO
POWER TRANSMISSION AS CONSTRUCTED BY
ANY UTILITY WHETHER A PUBLIC SERVICE
CORPORATION OR A POLITICAL SUBDIVISION.

(c) Before any construction authorized by paragraph (b) above may begin, the responsible person must submit plans for the construction to the floodplain administrator for review and comment.

(d) These exemptions do not preclude any person from liability if that person's actions increase flood hazards to any other person or property.

(e) IN ADDITION TO OTHER PENALTIES OR REMEDIES OTHERWISE PROVIDED BY LAW, THIS STATE, A POLITICAL SUBDIVISION OR A PERSON WHO MAY BE DAMAGED OR HAS BEEN DAMAGED AS A RESULT OF THE UNAUTHORIZED DIVERSION, RETARDATION OR OBSTRUCTION OF A WATERCOURSE HAS THE RIGHT TO COMMENCE, MAINTAIN AND PROSECUTE ANY APPROPRIATE ACTION OR PURSUE ANY REMEDY TO ENJOIN, ABATE OR OTHERWISE PREVENT ANY PERSON FROM VIOLATING OR CONTINUING TO VIOLATE THIS SECTION OR REGULATIONS ADOPTED PURSUANT TO THIS ARTICLE. IF A PERSON IS FOUND TO BE IN VIOLATION OF THIS SECTION, THE COURT SHALL REQUIRE THE VIOLATOR TO EITHER COMPLY WITH THIS SECTION IF AUTHORIZED BY THE FLOODPLAIN BOARD OR REMOVE THE OBSTRUCTION AND RESTORE THE WATERCOURSE TO ITS ORIGINAL STATE. THE COURT MAY ALSO AWARD SUCH MONETARY DAMAGES AS ARE APPROPRIATE TO THE INJURED PARTIES RESULTING FROM THE VIOLATION, INCLUDING REASONABLE COSTS AND ATTORNEY FEES.

Section 7. That Chapter 12, Article II, Section 12-25 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-25. Violations; DECLARATION OF PUBLIC NUISANCE.

(a) It is unlawful for a ~~any~~ person TO ENGAGE IN ANY DEVELOPMENT OR to divert, retard, or obstruct the flow of waters in any watercourse IF ~~whenever~~ it creates a hazard to life or property WITHOUT SECURING THE WRITTEN AUTHORIZATION REQUIRED BY A.R.S. § 48-3613. WHERE THE WATERCOURSE IS A DELINEATED FLOODPLAIN IT IS UNLAWFUL TO ENGAGE IN ANY DEVELOPMENT AFFECTING THE FLOW OF WATERS WITHOUT SECURING WRITTEN AUTHORIZATION REQUIRED BY A.R.S. § 48-3613.

(b) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail or personally served, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article. Any persons violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in § 1-7 of this code. Tempe may also enforce this article pursuant to A.R.S. § 9-461.03 ~~or under its authority to abate nuisances.~~

(c) If attempts to abate the violation are unsuccessful, the floodplain administrator shall submit to the administrator of Federal Insurance Administration a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to § 1316 of the National Flood Insurance Act of 1968, as amended.

(d) ALL DEVELOPMENT LOCATED OR MAINTAINED WITHIN ANY AREA OF SPECIAL FLOOD HAZARD AFTER THE EFFECTIVE DATE OF THIS ARTICLE, IN VIOLATION OF THIS ARTICLE, IS A PUBLIC NUISANCE PER SE AND MAY BE ABATED, PREVENTED OR RESTRAINED BY THE CITY.

Section 8. That Chapter 12, Article II, Section 12-27 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-27. Establishment of floodplain permit.

A floodplain permit shall be obtained before construction or development begins, INCLUDING PLACEMENT OF MANUFACTURED HOMES, within any special flood hazard area. Application for a floodplain permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to, plans, in duplicate, drawn to scale, showing the nature, location, dimensions and elevation of the area in question, ; existing or proposed structures, fill, storage of materials, drainage facilities, ; and the location of the foregoing. Specifically, the following information is required:

- (1) Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO, elevation of existing HIGHEST ADJACENT NATURAL grade and proposed elevation of lowest floor of all structures;

- (2) Proposed elevation, in relation to mean sea level, to which any NON-RESIDENTIAL structure will be floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 12- 29(c); ~~and~~
- (4) BASE FLOOD ELEVATION DATA FOR SUBDIVISION PROPOSALS OR OTHER DEVELOPMENTS GREATER THAN 50 LOTS OR 5 ACRES; AND
- (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

Section 9. That Chapter 12, Article II, Section 12-28 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-28. Designation, duties and responsibilities of the floodplain administrator.

(a) Designation. The CITY ENGINEER ~~floodplain administrator~~ is hereby designated TO ADMINISTER, IMPLEMENT AND ENFORCE ~~as enforcing officer for~~ this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out its intent. He may adopt a fee schedule for review of applications for permits and variances from the requirements of this article.

(b) Duties and responsibilities. Duties of the floodplain administrator or his designee shall include, but not be limited to:

- (1) Review all floodplain permits to determine that:
 - a. The permit requirements of this article have been satisfied;
 - b. All other required state and federal permits relating to floodplains and floodways have been obtained;
 - c. The site is reasonably safe from flooding; and
 - d. 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 ~~of the floodway~~. For purposes of this article, "adversely affects" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development within Tempe, will not increase the water surface elevation of the base flood more than one foot at any point.

- (2) Use of other base flood data. When base flood elevation data has not been provided in accordance with § 12-20, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source in order to administer this article. Any such information SHALL BE CONSISTENT WITH THE REQUIREMENTS OF FEMA AND THE DIRECTOR OF THE ARIZONA DEPARTMENT OF WATER RESOURCES AND shall be submitted to the floodplain board for adoption.
- (3) Obtain and maintain for public inspection and make available as needed for flood insurance policies:
 - a. The certified REGULATORY FLOOD elevation required in § 12-29(c)(1);
 - b. The FLOODPROOFING certification required in § 12-29(c)(2);
 - c. The floodproofing VENT certification required in § 12-29(c)(3); ~~and~~
 - d. The certified elevation required in § 12-32(2); -
 - e. THE FLOODWAY ENCROACHMENT CERTIFICATION REQUIRED IN § 12-34(1);
 - f. MAINTAIN A RECORD OF ALL VARIANCE ACTIONS, INCLUDING JUSTIFICATION FOR THEIR ISSUANCE, AND REPORT SUCH VARIANCES ISSUED IN ITS BIENNIAL REPORT SUBMITTED TO FEMA; AND

- g. OBTAIN AND MAINTAIN SUBSTANTIAL IMPROVEMENT CALCULATIONS.
- (4) Whenever a watercourse is to be altered or relocated:
- a. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration; and
 - b. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.
- (5) DEVELOP SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE PROCEDURES:
- a. USING FEMA PUBLICATION FEMA 123, “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.”
 - b. ASSURE PROCEDURES ARE COORDINATED WITH OTHER DEPARTMENTS AND DIVISIONS AND IMPLEMENTED BY TEMPE’S STAFF

~~Within one hundred twenty (120) days after completion of construction of any flood control protective works which change the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the Director of the Department of Water Resources of the State of Arizona.~~

- (6) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, the city floodplain administrator shall notify FEMA of the changes by submitting technical or scientific data in accordance with volume 44 of the Code of Federal Regulations, § 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- (7) Advise the Flood Control District of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of the development plans included with all applications for floodplain use permits to develop land in a floodplain or floodway within one mile of the corporate limits of the city. Also, advise the Flood Control District of Maricopa County in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses within the district's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the district no later than three (3) working days after having been received by the floodplain administrator.
- (8) Make interpretations where needed as to the exact location of the boundaries of special flood hazard areas (for example, 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 § 12-35.
- (9) Take actions on violations of this article as required in § 12-25 herein.
- (10) NOTIFY FEMA AND THE ARIZONA DEPARTMENT OF WATER RESOURCES OF ACQUISITION BY MEANS OF ANNEXATION, INCORPORATION, OR OTHERWISE OF ADDITIONAL AREAS OF JURISDICTION.

(c) WITHIN ONE HUNDRED TWENTY (120) DAYS AFTER COMPLETION OF CONSTRUCTION OF ANY FLOOD CONTROL PROTECTIVE WORKS WHICH CHANGE THE RATE OF FLOW DURING THE FLOOD OR THE CONFIGURATION OF THE FLOODPLAIN UPSTREAM OR DOWNSTREAM FROM OR ADJACENT TO THE PROJECT, THE PERSON OR AGENCY RESPONSIBLE FOR INSTALLATION OF THE PROJECT SHALL PROVIDE TO THE GOVERNING BODIES OF ALL JURISDICTIONS AFFECTED BY THE PROJECT A NEW DELINEATION OF ALL FLOODPLAINS AFFECTED BY THE PROJECT. THE NEW DELINEATION SHALL BE DONE ACCORDING TO THE CRITERIA ADOPTED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF ARIZONA.

Section 10. That Chapter 12, Article II, Section 12-29 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-29. Standards of construction.

In all areas of special flood hazards the following standards are required:

(a) ANCHORING

- (1) ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS SHALL BE ANCHORED TO PREVENT FLOTATION, COLLAPSE OR LATERAL MOVEMENT OF THE STRUCTURE RESULTING FROM HYDRODYNAMIC AND HYDROSTATIC LOADS, INCLUDING THE EFFECTS OF BUOYANCY; AND
- (2) ALL MANUFACTURED HOMES SHALL MEET THE ANCHORING STANDARDS OF § 12-33(a).

(b) CONSTRUCTION MATERIALS AND METHODS

- (1) ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS SHALL BE CONSTRUCTED WITH MATERIALS AND UTILITY EQUIPMENT RESISTANT TO FLOOD DAMAGE;
- (2) ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS SHALL BE CONSTRUCTED USING

METHODS AND PRACTICES THAT MINIMIZE
FLOOD DAMAGE;

- (3) ALL NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, AND OTHER PROPOSED NEW DEVELOPMENT SHALL BE CONSTRUCTED WITH ELECTRICAL, HEATING, VENTILATION, PLUMBING AND AIR CONDITIONING EQUIPMENT AND OTHER SERVICE FACILITIES THAT ARE DESIGNED AND/OR LOCATED SO AS TO PREVENT WATER FROM ENTERING OR ACCUMULATING WITHIN THE COMPONENTS DURING CONDITIONS OF FLOODING; AND
- (4) WITHIN ZONES AH OR AO, ADEQUATE DRAINAGE PATHS SHALL BE CONSTRUCTED AROUND STRUCTURES ON SLOPES TO GUIDE FLOODWATERS AROUND AND AWAY FROM PROPOSED STRUCTURES.

(c) ELEVATION AND FLOODPROOFING

(1) RESIDENTIAL CONSTRUCTION

RESIDENTIAL CONSTRUCTION, NEW OR SUBSTANTIAL IMPROVEMENT, SHALL HAVE THE LOWEST FLOOR, INCLUDING BASEMENT,

- a. IN AN AO ZONE, ELEVATED TO OR ABOVE THE REGULATORY FLOOD ELEVATION, OR ELEVATED AT LEAST TWO FEET ABOVE THE HIGHEST ADJACENT GRADE IF NO DEPTH NUMBER IS SPECIFIED.
- b. IN AN A ZONE WHERE A BFE HAS NOT BEEN DETERMINED, ELEVATED TO OR ABOVE THE REGULATORY FLOOD ELEVATION OR BE ELEVATED IN ACCORDANCE WITH THE CRITERIA DEVELOPED BY THE DIRECTOR OF THE ARIZONA DEPARTMENT OF WATER RESOURCES.

- c. IN ZONES AE, AH AND A1-30, ELEVATED TO OR ABOVE THE REGULATORY FLOOD ELEVATION.

UPON COMPLETION OF THE STRUCTURE, THE ELEVATION OF THE LOWEST FLOOR INCLUDING BASEMENT SHALL BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER OR SURVEYOR, AND VERIFIED BY TEMPE'S BUILDING INSPECTOR TO BE PROPERLY ELEVATED. SUCH CERTIFICATION AND VERIFICATION SHALL BE PROVIDED TO THE FLOODPLAIN ADMINISTRATOR.

(2) NONRESIDENTIAL CONSTRUCTION

NONRESIDENTIAL CONSTRUCTION, NEW OR SUBSTANTIAL IMPROVEMENT, SHALL EITHER BE ELEVATED TO CONFORM WITH SUBSECTION (c)(1) OF THIS SECTION OR TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES:

- a. BE FLOODPROOFED BELOW THE ELEVATION RECOMMENDED UNDER SUBSECTION (c)(1) OF THIS SECTION SO THAT THE STRUCTURE IS WATERTIGHT WITH WALLS SUBSTANTIALLY IMPERMEABLE TO THE PASSAGE OF WATER;
- b. HAVE STRUCTURAL COMPONENTS CAPABLE OF RESISTING HYDROSTATIC AND HYDRODYNAMIC LOADS AND EFFECTS OF BUOYANCY; AND
- c. BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT THAT THE STANDARDS OF THIS SECTION ARE SATISFIED. SUCH CERTIFICATION SHALL BE PROVIDED TO THE FLOODPLAIN ADMINISTRATOR.

(3) FLOOD OPENINGS

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 STORAGE, AND WHICH ARE SUBJECT TO FLOODING, SHALL BE DESIGNED TO AUTOMATICALLY EQUALIZE HYDROSTATIC FLOOD FORCES ON EXTERIOR WALLS BY ALLOWING FOR THE ENTRY AND EXIT OF FLOODWATER. DESIGNS FOR MEETING THIS REQUIREMENT MUST MEET OR EXCEED THE FOLLOWING CRITERIA:

- a. HAVE A MINIMUM OF TWO OPENINGS, ON DIFFERENT SIDES OF EACH ENCLOSED AREA, HAVING A TOTAL NET AREA OF NOT LESS THAN ONE SQUARE INCH FOR EVERY SQUARE FOOT OF ENCLOSED AREA SUBJECT TO FLOODING. THE BOTTOM OF ALL OPENINGS SHALL BE NO HIGHER THAN ONE FOOT ABOVE GRADE. OPENINGS MAY BE EQUIPPED WITH SCREENS, LOUVERS, VALVES, OR OTHER COVERINGS OR DEVICES PROVIDED THAT THEY PERMIT THE AUTOMATIC ENTRY AND EXIT OF FLOODWATER; OR
- b. IF IT IS NOT FEASIBLE OR DESIRABLE TO MEET THE OPENINGS CRITERIA STATED ABOVE, A REGISTERED ENGINEER OR ARCHITECT MAY DESIGN AND CERTIFY THE OPENINGS.

(4) MANUFACTURED HOMES

- a. MANUFACTURED HOMES SHALL ALSO MEET THE STANDARDS IN § 12-33(a).

(5) GARAGES AND LOW COST ACCESSORY STRUCTURES

- a. ATTACHED GARAGES.

- i. A GARAGE ATTACHED TO A RESIDENTIAL STRUCTURE, CONSTRUCTED WITH THE GARAGE FLOOR SLAB BELOW THE REGULATORY FLOOD ELEVATION, MUST BE DESIGNED TO ALLOW FOR THE AUTOMATIC ENTRY OF FLOOD WATERS. SEE SUBSECTION (c)(3) OF THIS SECTION. AREAS OF THE GARAGE BELOW THE REGULATORY FLOOD ELEVATION MUST BE CONSTRUCTED WITH FLOOD RESISTANT MATERIALS. SEE SUBSECTION (b) OF THIS SECTION.
 - ii. A GARAGE ATTACHED TO A NONRESIDENTIAL STRUCTURE MUST MEET THE ABOVE REQUIREMENTS OR BE DRY FLOODPROOFED.
- b. DETACHED GARAGES AND ACCESSORY STRUCTURES.
- i. “ACCESSORY STRUCTURE” USED SOLELY FOR PARKING (2 CAR DETACHED GARAGES OR SMALLER) OR LIMITED STORAGE (SMALL, LOW-COST SHEDS), MAY BE CONSTRUCTED SUCH THAT ITS FLOOR IS BELOW THE REGULATORY FLOOD ELEVATION, PROVIDED THE STRUCTURE IS DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:
 - a) USE OF THE ACCESSORY STRUCTURE MUST BE LIMITED TO PARKING OR LIMITED STORAGE;
 - b) THE PORTIONS OF THE ACCESSORY STRUCTURE LOCATED BELOW THE

REGULATORY FLOOD
ELEVATION MUST BE BUILT
USING FLOOD-RESISTANT
MATERIALS;

- c) THE ACCESSORY STRUCTURE
MUST BE ADEQUATELY
ANCHORED TO PREVENT
FLOTATION, COLLAPSE AND
LATERAL MOVEMENT;
 - d) ANY MECHANICAL AND
UTILITY EQUIPMENT IN THE
ACCESSORY STRUCTURE
MUST BE ELEVATED OR
FLOODPROOFED TO OR ABOVE
THE REGULATORY FLOOD
ELEVATION;
 - e) THE ACCESSORY STRUCTURE
MUST COMPLY WITH
FLOODWAY ENCROACHMENT
PROVISIONS IN § 12-34; AND
 - f) THE ACCESSORY STRUCTURE
MUST BE DESIGNED TO ALLOW
FOR THE AUTOMATIC ENTRY
OF FLOOD WATERS IN
ACCORDANCE WITH
SUBSECTION (c)(3) OF THIS
SECTION.
- ii. DETACHED GARAGES AND
ACCESSORY STRUCTURES NOT
MEETING THE ABOVE STANDARDS
MUST BE CONSTRUCTED IN
ACCORDANCE WITH ALL
APPLICABLE STANDARDS IN THIS
SECTION.

~~(a) Anchoring:~~

~~(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.~~

~~(2) All manufactured homes shall meet the anchoring standards of § 12-33(b).~~

~~(b) Construction materials and methods:~~

~~(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.~~

~~(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.~~

~~(c) Elevation and floodproofing:~~

~~(1) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the regulatory flood elevation. Nonresidential structures may meet the standards in subsection (3) below. Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator prior to the issuance of a certificate of occupancy.~~

~~(2) New construction and substantial improvement of any structure in Zone AO shall have the lowest floor, including basement, higher than the highest adjacent grade by at least one foot higher than the depth number on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in subsection (3) below. Upon completion of the structure and prior to occupancy, a registered professional engineer or surveyor shall certify to the floodplain administrator that the elevation of the structure meets this standard.~~

~~(3) Nonresidential construction shall either be elevated in conformance with subsections (1) or (2) above or, together with attendant utility and sanitary facilities:~~

- a. ~~Be floodproofed so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water;~~
 - b. ~~Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and~~
 - c. ~~Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator prior to occupying any building or structure on the property.~~
- (4) ~~Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor 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 floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.~~
- (5) ~~Require, for all new construction and substantial improvements within zones AH or AO, adequate drainage paths around structures on slopes to guide floodwater around and away from structures.~~
- (6) ~~Manufactured homes shall meet the above standards and also the standards in § 12-33.~~

Section 11. That Chapter 12, Article II, Section 12-32 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-32. Standards for subdivisions.

The following standards shall apply to subdivisions:

- (1) All NEW preliminary subdivision plats AND OTHER PROPOSED DEVELOPMENT (INCLUDING PROPOSALS FOR MANUFACTURED HOME PARKS AND SUBDIVISIONS), GREATER THAN 50 LOTS OR FIVE ACRES, WHICHEVER IS LESSER, shall identify ~~the boundary~~ of the SPECIAL flood hazard area and the elevation of the base flood;
- (2) All final subdivision plans will provide the elevation of proposed structure(s) and pads. The final LOWEST FLOOR AND GRADE ELEVATIONS ~~pad elevation~~ shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator; and
- (3) All subdivision proposals AND OTHER PROPOSED DEVELOPMENT shall be consistent with the need to minimize flood damage. All subdivision proposals AND OTHER PROPOSED DEVELOPMENT shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage. All SUBDIVISION PROPOSALS AND OTHER PROPOSED DEVELOPMENT ~~subdivisions~~ shall provide adequate drainage to reduce exposure to flood hazards.

Section 12. That Chapter 12, Article II, Section 12-33 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-33. Standards for manufactured homes and recreational vehicles.

(a) All new and replacement manufactured homes and ALL SUBSTANTIAL IMPROVEMENTS ~~additions~~ to manufactured homes within special flood hazard areas shall:

- (1) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at the regulatory flood elevation; and
- (2) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. METHODS OF ANCHORING MAY INCLUDE, BUT ARE NOT LIMITED TO, USE OF OVER-THE-TOP OR FRAME TIES TO GROUND ANCHORS. THIS REQUIREMENT IS IN ADDITION TO APPLICABLE

STATE AND LOCAL ANCHORING REQUIREMENTS
FOR RESISTING WIND FORCES.

- (b) All recreational vehicles placed on site will either:
- (1) Be on site for fewer than one hundred eighty (180) consecutive days;
 - (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 permanent attached additions; or
 - (3) Meet the permit requirements of § 12-27 and the elevation and anchoring requirements for manufactured homes in SUBSECTION (a) OF THIS SECTION ~~§ 12-33~~.

Section 13. That Chapter 12, Article II, Section 12-35 of the Tempe City Code is hereby amended to read as follows:

Sec. 12-35. Variances and the right of appeal.

(a) The floodplain administrator may grant variances from the requirements of this article.

- (1) A VARIANCE SHALL BE GRANTED ONLY FOR A PARCEL WITH PHYSICAL CHARACTERISTICS SO UNUSUAL THAT COMPLYING WITH THIS ARTICLE WOULD CREATE AN EXCEPTIONAL HARDSHIP TO THE APPLICANT OR SURROUNDING PROPERTY OWNERS.
- (2) THOSE PHYSICAL CHARACTERISTICS MUST BE UNIQUE TO THAT PROPERTY AND NOT SHARED BY ADJACENT PARCELS AND PERTAIN TO THE LAND, NOT TO ANY STRUCTURE, ITS INHABITANTS OR THE PROPERTY OWNERS.

(b) The floodplain board 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 article.

(c) In passing upon such applications, consideration shall be given all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to TEMPE ~~the community~~;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (8) The safety of access to the property in time of flood for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.

(d) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing §§ 12-28 AND 12-29 AND items (c)(1) through (10), above, have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(e) Upon consideration of the factors of items (c)(1) through (10) above and the purposes of this article, the floodplain administrator may attach such conditions to the granting of variances as he deems necessary to further the purposes of this article.

(f) The floodplain administrator shall maintain the records of all VARIANCE ~~appeal~~ actions, INCLUDING JUSTIFICATION FOR THEIR ISSUANCE, and report any variances to FEMA ~~the Federal Insurance Administration~~ upon request.

(g) Variances may be issued for the REPAIR ~~reconstruction~~, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, UPON A DETERMINATION THAT THE PROPOSED REPAIR OR REHABILITATION WILL NOT PRECLUDE THE STRUCTURE'S CONTINUED DESIGNATION AS A HISTORIC STRUCTURE AND THE VARIANCE IS THE MINIMUM NECESSARY TO PRESERVE THE HISTORIC CHARACTER AND DESIGN OF THE STRUCTURE ~~without regard to the procedures set forth in the remainder of this section.~~

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(j) Variances shall only be issued upon:

- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(k) Any applicant to whom a variance is granted shall be given written notice OVER THE SIGNATURE OF A TEMPE OFFICIAL that:

(1) THE ISSUANCE OF A VARIANCE TO CONSTRUCT the structure ~~will be permitted to be built with a lowest floor elevation~~ below the regulatory flood elevation WILL RESULT IN INCREASED PREMIUM RATES FOR ~~and that the cost of~~ flood insurance UP TO AMOUNTS AS HIGH AS \$25 FOR \$100 OF INSURANCE COVERAGE AND will be commensurate with the increased risk TO LIFE AND PROPERTY resulting from the reduced lowest floor elevation. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided for by Title 26, Chapter 2, Article 2, Arizona Revised Statutes. A copy of the notice shall be recorded by the floodplain board in the office of the Maricopa County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

Section 14. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA this 3rd day of October, 2013.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney