

ORDINANCE NO. 8-2021

AN ORDINANCE OF THE VILLAGE OF BONNEY, TEXAS, FOLLOWING STATUTORY AUTHORIZATION, MAKING FINDINGS OF FACT, STATING PURPOSES AND METHODS OF **REDUCING FLOOD LOSSES**; CONTAINING DEFINITIONS; PROVIDING FOR THE IDENTIFICATION OF FLOOD-PRONE AREAS, COMPLIANCE, ABROGATION, INTERPRETATION, WARNING, AND DISCLAIMER OF LIABILITY; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; PROVIDING FOR A PENALTY CLAUSE; REPEALING ORDINANCE NO4-2020, THE FORMER FLOOD DAMAGE PREVENTION ORDINANCE; PROVIDING A SAVINGS CLAUSE, SEVERANCE CLAUSE, AND EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATING TO FLOOD DAMAGE PREVENTION.

WHEREAS, certain sections of the Village of Bonney, Texas (the "Village"), have been designated as flood way and flood plain areas; and

WHEREAS, real property could be subject to possible damage from periodic flooding; and

WHEREAS, relief is available in the form of flood insurance, as authorized by the National Flood Insurance Act of 1968 as amended; and

WHEREAS, it is the intent of the Village Board of Alderpersons (the "Council," "Board," or "Board of Alderpersons") to comply with land use and management criteria regulations as required in said Act; and

WHEREAS, it is also the intent of the Board of Alderpersons to recognize and duly evaluate flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards; and

WHEREAS, under the laws of the State of Texas, authority is conferred upon the Village to establish and amend land use laws and management criteria by the enactment of a flood prevention ordinance; and

WHEREAS, the Board of Alderpersons has reviewed Ordinance No. 4-2020, the prior Flood Damage Prevention Ordinance of the Village; and

WHEREAS, the Board of Alderpersons deems it appropriate to update the Flood Damage Prevention Ordinance to include current land use laws, management criteria regulations, FEMA flood regulations, Flood Insurance Rate Maps, and Flood Insurance Studies, with other revisions;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERPERSONS OF THE VILLAGE OF BONNEY, TEXAS:

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**FLOOD DAMAGE PREVENTION ORDINANCE
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ARTICLE I
STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND METHODS

SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of Texas has, through Chapter 16, Subchapter I, Texas Water Code, as amended, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of Alderpersons of the Village of Bonney, Texas (“the Village” or “the City”) does ordain as follows:

SECTION B. FINDINGS OF FACT

(1) The Areas of Special Flood Hazard of the Village are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for Flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These Flood losses are created by the cumulative effect of obstructions in Floodplains which cause an increase in Flood heights and velocities, and by occupancy of Flood hazard areas by uses vulnerable to Floods and hazardous other lands because they are inadequately elevated, Flood Proofed or otherwise protected from Flood damage.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this Ordinance 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 to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly Flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with Flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in Floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of Flood Prone Areas in such a manner as to minimize future Flood blight areas; and
- (7) Ensure that potential buyers are notified that property is in a Flood area.

SECTION D. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this Ordinance uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of Flood, or cause excessive increases in Flood heights or velocities;
- (2) Require that uses vulnerable to Floods, including facilities which serve such uses, be protected against Flood damage at the time of initial construction;
- (3) Control the alteration of natural Floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of Flood waters;
- (4) Control filling, grading, dredging and other development which may increase Flood damage; and
- (5) prevent or regulate the construction of Flood barriers which will unnaturally divert Flood waters or which may increase Flood hazards to other lands.

ARTICLE 2 DEFINITIONS

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

ALLUVIAL FAN FLOODING B means Flooding occurring on the surface of an Alluvial Fan or similar landform which originates at the Apex and is characterized by high-velocity flows; active processes or erosion, sediment transport and deposition; and unpredictable flow paths.

APEX B means a point on an Alluvial Fan or similar landform below which the flow path of the major stream that formed the Alluvial Fan becomes unpredictable and Alluvial Fan Flooding can occur.

APPEAL - means a request for a review of the Floodplain Administrator's interpretation of any provision of this Ordinance or a request for a Variance.

APPURTENANT STRUCTURE B means a Structure which is on the same parcel of property as the principal Structure to be insured and the use of which is incidental to the use of the principal Structure.

AREA OF FUTURE CONDITIONS FLOOD HAZARD B means the land area that would be inundated by the one percent (1%) annual chance (100 year) Flood based upon future conditions hydrology.

AREA OF SHALLOW FLOODING - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map ("FIRM") with a one percent (1%) chance or greater annual chance of Flooding to an average depth of one (1) to three (3) feet where a clearly

defined channel does not exist, where the path of Flooding is unpredictable and where velocity flow may be evident. Such Flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - is the land in the Floodplain within a community subject to a one percent (1%) or greater chance of Flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map ("FHBM"). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE OR V.

BASE FLOOD - means the Flood having a one percent (1%) chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

BASEMENT - means any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALLS - 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 or supporting foundation system.

CITY, VILLAGE, or COMMUNITY - means the City or Village that passes this ordinance. Any reference herein or in any regulations referenced herein to the personnel of the City, Village, or Community shall also include any Floodplain Administrator hereunder, regardless whether such Floodplain Administrator is an officer or employee of the City, Village, or Community or is an independent contractor.

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 manmade change in improved and 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.

ELEVATED BUILDING - means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AII, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a Flood of up to the magnitude of the Base Flood. In the case of Zones A1-30, AE, A, A99, AO, AII, B, C, X, and D,

Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of Flood waters. In the case of Zones V1-30, VE, or V, Elevated Building also includes a building otherwise meeting the definition of Elevated Building, even though the lower area is enclosed by means of Breakaway Walls if the Breakaway Walls meet the standards of Section 60.3(e)(5) of the National Flood Insurance Program ("NFIP") regulations.

EXISTING CONSTRUCTION - means for the purposes of determining rates, Structures for which the Start of Construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing Construction may also be referred to as Existing Structures.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

FLOOD INSURANCE RATE MAP ("FIRM") - means an official map of a community, on which the Federal Emergency Management Agency ("FEMA") has delineated both the Areas of Special Flood Hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY ("FIS") - is the official report provided by FEMA. The report contains Flood profiles, water surface elevation of the Base Flood, as well as the Flood Boundary-Floodway Map ("FBFM").

FLOOD PLAIN OR FLOOD PRONE AREA - means any land area susceptible to being inundated by water from any source (see definition of Flooding).

FLOOD PLAIN MANAGEMENT B means the operation of an overall program of corrective and Flood damage, including, but not limited to, emergency preparedness plans, Flood control works and Flood Management Regulations.

FLOOD PLAIN MANAGEMENT REGULATIONS B means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a Floodplain

ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State and local regulations in any combination thereof, which provides standards for the purpose of Flood damage prevention and reduction.

FLOOD PROOFING B means any combination of structural and non-structural additions, changes, or adjustments to Structures which reduce or eliminate Flood damage to real estate or improved real property, water and sanitary sewer 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 areas within a community subject to a special flood hazard and the extent of the depths of associated Flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized Flood modifying works are those constructed in conformance with sound engineering standards.

FLOODWAY (OR REGULATORY FLOODWAY) - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than 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.

HABITABLE FLOOR - means any floor usable for the following purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used for storage purposes only is not a Habitable Floor.

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 B means any Structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district.
- (3) Individually listed on a state inventory of historic places in stated with historic preservation programs which have been approved by the Secretary of the Interior;
or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
- (a) By an approved state program as determined by the Secretary of Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LEVEE - means a manmade 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 or vehicles, building access or storage in an area other than a Basement area is not considered a building's Lowest Floor; provided that such enclosure is not built so as to render the Structure in violation of the applicable non-elevation design requirement of Section 60.3 of the NFIP regulations.

MANUFACTURED HOME - means a Structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For insurance purposes the term Manufactured Home does not include a Recreational Vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION B means a parcel (or contiguous parcels) of land divided into two (2) or more Manufactured Home lots for rent or for sale.

MEAN SEA LEVEL - means, for purposes of the NFIP the National Geodetic Vertical Datum ("NGVD") of 1929 or other datum, to which Base Flood elevations shown on a community's FIRM are referenced.

NEW CONSTRUCTION - means, for the purposed of determined insurance rates, structures for which the "Start of Construction" commenced on or after the effective date of an initial firm or after December 31, 1974, whichever is later and includes any subsequent improvements to such structures. For Floodplain Management purposes, Structures for which the Start of Construction commenced on or after the effective date of a Floodplain Management Regulation adopted by a community.

NEW MANUFACTURED HOME PARK OR SUBDIVISION B means a Manufactured Home Park or Subdivision for which the construction of facilities for servicing the lots on which the Manufactured Homes are to affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of Floodplain Management Regulations adopted by a community.

RECREATIONAL VEHICLE B means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

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

SPECIAL FLOOD HAZARD AREA B see AREA OF SPECIAL FLOOD HAZARD.

START OF CONSTRUCTION - (for other than New Construction or Substantial Improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]), includes Substantial Improvement and means the date the building permit was issued, provided the actual Start of Construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a Structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a Manufactured Home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for 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, which 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 reconstruction, rehabilitation, addition, or other improvement of a Structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the Structure before Start of Construction of the improvement. This term includes Structures which have incurred Substantial Damage, regardless of the actual repair work performed. The term does not, however, include either: (i) 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 of enforcement office and which are the minimum necessary to assure safe living conditions, or (ii) any alteration of a Historic Structure provided that the alteration will not preclude the Structure's continued designation as a Historic Structure.

VARIANCE - is a grant of relief by a community from the terms of a Floodplain Management Regulation (For full requirements see Section 60.6 of the NFIP regulations.)

VIOLATION - means the failure of a Structure or other development to be fully compliant with the community's Floodplain Management Regulations. A Structure or other Development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3 (b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION - means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of Floods of various magnitudes and frequencies in the Flood plains of coastal or Riverine areas.

ARTICLE 3 GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

This Ordinance shall apply to all Areas of Special Flood Hazard within the jurisdiction of the Village.

SECTION B. BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled "Flood Insurance Study (FIS) for Brazoria County, TX and Incorporated Areas," Effective 12-30-20, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated 12-30-20 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development permit shall be required to ensure conformance with the provisions of this Ordinance.

SECTION D. COMPLIANCE

No Structure or land shall hereafter be located, altered, or have its use changed without a Development Permit hereunder and full compliance with the terms of this Ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION

In the interpretation and application of this Ordinance, all provisions shall be; (i) considered as minimum requirements; (ii) liberally construed in favor of the governing body; and (iii) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY

The degree of Flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater Floods can and will occur and Flood heights may be increased by manmade or natural causes. This Ordinance does not imply that land outside the Areas of Special Flood Hazards or uses permitted within such areas will be free from Flooding or Flood damages. This Ordinance shall not create liability on the part of the community or any official or employee thereof for any Flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

**ARTICLE 4
ADMINISTRATION**

SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Village Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Ordinance and other appropriate sections of 44 C.F.R. (NFIP regulations) pertaining to Floodplain Management.

SECTION B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

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

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this Ordinance.
- (2) Review permit applications to determine whether the proposed building project site, including the placement of Manufactured Homes, will be reasonably safe from Flooding.
- (3) Review, approve or deny all applications for Development permits required by adoption of this Ordinance.
- (4) Review permits for proposed Development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the boundaries of the Areas of Special Flood Hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(6) Notify, in Riverine situations, adjacent communities and the State Coordinating Agency, which is the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(7) Assure that the Flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When Base Flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood elevation data and Floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

(9) When a regulatory Floodway has not been designated, the Floodplain Administrator must require that no New Construction, Substantial Improvements, or other Development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed Development, when combined with all other existing and anticipated Development, will not increase the water surface elevation of the Base Flood more than one (1) foot at any point within the community.

(10) Under the provisions of 44 C.F.R. Chapter 1, Section 65.12, of the NFIP regulations, a community may approve certain Development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the Base Flood by more than one (1) foot, provided that the community first completes all of the provisions required by Section 65.12.

SECTION C. PERMIT PROCEDURES

(1) An Application for a Development permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of Manufactured Homes, and the location of the foregoing in relation to Areas of Special Flood Hazard. Additionally, the following information is required:

- a. Elevation (in relation to Mean Sea Level), of the Lowest Floor (including Basement) of all new and substantially improved Structures;
- b. Elevation in relation to Mean Sea Level to which any nonresidential Structure shall be Flood Proofed;

- c. A certificate from a registered professional engineer or architect that the nonresidential Flood Proofed Structure shall meet the Flood Proofing criteria of Article 5, Section (B)(3);
 - d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed Development; and
 - e. Maintain a record of all such information in accordance with Article 4, Section (B)(1).
- (2) Approval or denial of a Development permit by the Floodplain Administrator shall be based on all of the provisions of this Ordinance and the following relevant factors:
- a. The danger to life and property due to Flooding or erosion damage;
 - b. The susceptibility of the proposed facility and its contents to Flood damage and the effect of such damage on the individual owner;
 - c. The danger that materials may be swept onto other lands to the injury of others;
 - d. The compatibility of the proposed use with existing and anticipated Development;
 - e. The safety of access to the property in times of Flood for ordinary and emergency vehicles;
 - f. The costs of providing governmental services during and after Flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - g. The expected heights, velocity, duration, rate of rise and sediment transport of the Flood waters and the effects of wave action, if applicable, expected at the site;
 - h. The necessity to the facility of a waterfront location, where applicable;
 - i. The availability of alternative locations, not subject to Flooding or erosion damage, for the proposed use; and
 - j. The relationship of the proposed use to the comprehensive plan for that area.

SECTION D. VARIANCE PROCEDURES

(1) The Board of Alderpersons shall hear and render judgment on requests for Variances from the requirements of this Ordinance.

(2) The Board of Alderpersons shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.

(3) Any person or persons aggrieved by the decision of the Board of Alderpersons may appeal such decision in the courts of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report Variances to FEMA upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of Structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.

(6) Variances may be issued for New Construction and Substantial Improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing Structures constructed below the Base Flood level, providing the relevant factors in Section C(2) of this Article have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the Variance increases.

(7) Upon consideration of the factors noted above and the intent of this Ordinance, the Board of Alderpersons may attach such conditions to the granting of Variances as it deems necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).

(8) Variances shall not be issued within any designated Floodway if any increase in Flood levels during the Base Flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of Historic Structures upon a determination that the proposed repair or rehabilitation will not preclude the Structure's continued designation as a Historic Structure and the Variance is the minimum necessary to preserve the historic character and design of the Structure.

(10) Prerequisites for granting Variances:

- a. Variances shall only be issued upon a determination that the Variance is the minimum necessary, considering the Flood hazard, to afford relief.
- b. Variances shall only be issued upon (i) showing a good and sufficient cause; (ii) a determination that failure to grant the Variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of a Variance will not result in increased Flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c. Any application to whom a Variance is granted shall be given written notice that the Structure will be permitted to be built with the Lowest Floor elevation below the Base Flood elevation, and that the cost of Flood insurance will be commensurate with the increased risk resulting from the reduced Lowest Floor elevation.

(11) Variances may be issued by a community for New Construction and Substantial Improvements and for other Development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article 4, Section D(1)-9 are met; and (ii) the Structure or other Development is protected by methods that minimize Flood damages during the Base Flood and create no additional threats to public safety.

ARTICLE 5 PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all Areas of Special Flood Hazards the following provisions are required for all New Construction and Substantial Improvements:

(1) All New Construction or Substantial Improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All New Construction or Substantial Improvements shall be constructed by methods and practices that minimize Flood damage;

(3) All New Construction or Substantial Improvements shall be constructed with materials resistant to Flood damage;

(4) All New Construction or Substantial Improvements 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.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of Flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of Flood waters into the system and discharge from the systems into Flood waters; and

(7) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during Flooding.

SECTION B. SPECIFIC STANDARDS

In all Areas of Special Flood Hazard where Base Flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B(8), or (iii) Article 5, Section C(3), the following provisions are required:

(1) Permanent Construction - New Construction or Substantial Improvements of any permanent Structure shall be constructed 200 feet from a Floodway and 75 feet from the edge of a bayou, creek, Floodway, drainage ditch or similar waterway.

(2) Residential Construction - New Construction and Substantial Improvements of any residential Structure shall have the Lowest Floor (including Basement), elevated to or above the Base Flood elevation. New Construction or Substantial Improvements within the areas of no special flood hazard in Zone X or any residential Structure shall have the Habitable Floor 24 inches above the grade. New Construction or Substantial Improvements of any residential Structure within an Area of Special Flood Hazard shall have the Habitable Floor 24 inches above the Base Flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C(1)a, is satisfied.

(3) Nonresidential Construction - New Construction and Substantial Improvements of any commercial, industrial or other nonresidential Structure shall either have the Lowest Floor (including Basement) elevated 24 inches above the Base Flood level or, together with attendant utility and sanitary facilities, be designed so that below the Base Flood level the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to Mean Sea Level) to which such Structures are Flood Proofed shall be maintained by the Floodplain Administrator.

(4) Enclosures - New Construction and Substantial Improvements, with 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 or meet or exceed the following minimum criteria:

- a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to Flooding shall be provided.
- b. The bottom of all openings shall be no higher than one (1) foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of Flood waters.

(5) Manufactured Homes

- a. Require that all Manufactured Homes to be placed within Zone A, shall be installed using methods and practices which minimize Flood damage. For

the purpose of this requirement, Manufactured Homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- b. Require that Manufactured Homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM, on site (i) outside of a Manufactured Home Park or Subdivision; (ii) in a New Manufactured Home Park or Subdivision; (iii) in an expansion to an existing Manufactured Home Park or Subdivision; or (iv) in an existing Manufactured Home Park or Subdivision on which a Manufactured Home has incurred Substantial Damage as a result of a Flood, be elevated on a permanent foundation such that the Lowest Floor of the Manufactured Home is erected to or above the Base Flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. Require that Manufactured Homes be placed or substantially improved on sites in an existing Manufactured Home Park or Subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraphs (4) of this section be elevated so that either: (i) the Lowest Floor of the Manufactured Home is at or above the Base Flood elevation; or (ii) the Manufactured Home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(6) Recreational Vehicles. Require that Recreational Vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either: (i) be on the site for fewer than 180 consecutive days; (ii) be fully licensed and ready for highway use; or (iii) meet the permit requirements of Article 4, Section C (1), and the elevation and anchoring requirements for Manufactured Homes in paragraph (4) of this section. 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.

(7) Fill Material

- a. A permit is required for any quantity of fill material being placed in the flood plain, except for fill for commercial farming or ranching use on a tract larger than 5 acres.
- b. The property owner must provide to the Village, upon request by the Village Flood Plain Administrator, written information showing the location from which the fill material came, whether or not it was from a governmental project, and who hauled/delivered the fill material.
- c. Fill material shall be placed no closer than ten (10) feet from

the property line.

- d. If the fill is placed on a piece of property in which the natural flow of water is conveyed on the proposed fill site, then the property owner is required to mitigate for the altered flow. Natural flow could be by sheet flow, swale, ditch, slough, or other natural or man-made means of conveyance of water. Mitigation could include ditches, swales, detention/retention ponds or other reasonable means of conveyance/detention/retention.
- e. All fill material must be spread evenly within 6 months of the permit issuance date. If the fill material is not spread within this time period, the property owner may be required to remove the material.

SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS

(1) All subdivision proposals including Manufactured Home Parks and Subdivisions shall be consistent with Article 1, Sections B, C, and D) of this Ordinance.

(2) All proposals for the Development of subdivisions including Manufactured Home Parks and Subdivisions shall meet Development permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this Ordinance.

(3) Base Flood elevation data shall be generated for subdivision proposals and other proposed Development including Manufactured Home Parks and Subdivisions which is greater than 50 lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B (8) of this Ordinance.

(4) All subdivision proposals including Manufactured Home Parks and Subdivisions shall have adequate drainage provided to reduce exposure to Flood hazards.

(5) All subdivision proposals including Manufactured Home Parks and Subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate Flood damage.

SECTION D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)

Located within the Areas of Special Flood Hazard established in Article 3, Section B, are areas designated as Areas of Shallow Flooding. These areas have special flood hazards associated with Base Flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of Flooding is unpredictable and where velocity flow may be evident. Such Flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All New Construction and Substantial Improvements of residential Structures have the Lowest Floor (including Basement) elevated to or above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified);

(2) All New Construction and Substantial Improvements of non-residential Structures:

- (a) have the Lowest Floor (including Basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified); or
- (b) together with attendant utility and sanitary facilities be designed so that below the base specified Flood depth in an AO Zone, or below the Base Flood elevation in an AH Zone, level the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section C, are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around Structures on slopes, to guide Flood waters around and away from proposed Structures.

SECTION E. FLOODWAYS

Floodways - located within Areas of Special Flood Hazard established in Article 3, Section B, are areas designated as Floodways. Since the Floodway is an extremely hazardous area due to the velocity of Flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply;

(1) Encroachments are prohibited, including fill, New Construction, Substantial Improvements and other Development within the adopted regulatory Floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in Flood levels within the community during the occurrence of the Base Flood discharge.

(2) If Article 5, Section E (1) above is satisfied, all New Construction and Substantial Improvements shall comply with all applicable Flood hazard reduction provisions of Article 5.

(3) Under the provisions of 44 C.F.R., Chapter 1, Section 65.12, of the NFIP regulations, a community may permit encroachments within the adopted regulatory Floodway that would result in an increase in Base Flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

ARTICLE 6 OFFENSES, PENALTIES, AND OTHER REMEDIES FOR NONCOMPLIANCE

(1) No person shall participate in any way in constructing, locating, extending, converting, or altering any structure or land without full compliance with the terms of this

ordinance and other applicable regulations. Violation of any provision of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

(2) Each calendar day or portion of a calendar day on which a violation continues, recurs, remains in place, or is repeated shall constitute a separate offense.

(3) In a suit against the owner or the owner's representative with control over the premises, the Village may recover a civil penalty up to \$1,000.00 per day, upon proof that:

(a) the defendant was actually notified of the provisions of this ordinance; and

(b) after the defendant received notice of the ordinance provisions, the defendant committed acts in violation of this ordinance or failed to take action necessary for compliance with this ordinance.

(4) On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the Village may obtain against the owner or owner's representative with control over the premises an injunction that:

(a) prohibits specific conduct that violates this ordinance; and

(b) requires specific conduct that is necessary for compliance with this ordinance.

It is not necessary for the Village to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.

(5) If any person, firm, or entity violates any of the provisions of this Ordinance or fails to comply therewith, the Village may institute any appropriate action or proceedings in court to prevent, restrain, correct, or abate any illegal act, conduct, business, or use in or about any land.

(6) No person shall participate in any way in connecting or providing electric service by a public utility to any structure that is in violation of this ordinance.

(7) All obligations, prohibitions, and offenses hereunder or under any other applicable laws are cumulative. No such obligations, prohibitions, or offenses shall be construed to limit any other such obligations, prohibitions, or offenses.

(8) All remedies and penalties in favor of the Village or against any person other than the Village hereunder or under any other applicable laws are cumulative. The pursuant or receipt

by the Village of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the Village from pursuing and receiving any and all other remedies and penalties of any nature whatsoever.

(9) Without the limiting the generality of the foregoing, the Village may pursue a criminal prosecution without pursuing civil remedies; the Village may pursue civil remedies without pursuing a criminal prosecution; or the Village may do both.

ARTICLE 7 GENERAL

SECTION A. FINDINGS OF FACT

The Board of Aldermen of the Village finds that all procedures, prerequisites, and requirements of law concerning this ordinance have been satisfied.

SECTION B. REPEAL OF CERTAIN PRIOR ORDINANCES; SAVINGS CLAUSE

This ordinance supersedes, replaces, and repeals Ordinance No. 4-2020 and all other prior Flood Damage Prevention Ordinances of the Village of Bonney. However, each of those prior ordinances shall remain in force and effect as to any violations occurring before the effective date of its successor Flood Damage Prevention Ordinance, and neither the passage of this ordinance nor the repeal of said prior ordinances shall impair any prosecution, past, present, or future, for any violation occurring before the effective date of this ordinance.

Except as specifically provided herein, all other ordinances and portions of ordinances of the Village of Bonney shall remain in full force and effect.

SECTION C. CONFLICTS IN TERMS

In the event of conflict between the provisions within this ordinance, or between the provisions of this ordinance and any other ordinance or other law, the stricter provision shall govern and control.

SECTION D. NONWAIVER BY NONENFORCEMENT

The failure or omission by the Village upon one or more occasions, to enforce any right, obligation, or remedy hereunder, under any permit issued hereunder, or under any other applicable laws shall never be construed as a waiver of the Village's right to strictly enforce such right, obligation, or remedy, and the Village may resume such strict enforcement without advance notice.

SECTION E. NONWAIVER OF IMMUNITY

Nothing herein, in any document issued pursuant hereto, or in any action pursuant hereto shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the Village.

SECTION F. NONLIABILITY OF VILLAGE

Neither the Village nor any of its agents, officers, attorneys, or employees shall have any liability of any nature to any person other than the Village for any act, omission, or condition in any way directly or indirectly related to the subject matter of this ordinance.

SECTION G. CERTIFICATION

It is hereby found and declared by Board of Alderpersons and Mayor of Bonney, Texas, that severe Flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that Flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this Ordinance become effective immediately.


SECTION H. SEVERABILITY

If any section, clause, sentence or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION I. EFFECTIVE DATE

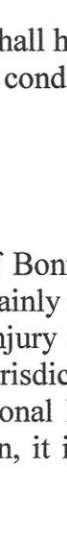
This ordinance shall take effect as of the date of its passage and approval.

PASSED AND APPROVED ON THIS 16TH DAY OF NOVEMBER, 2021.



**RAYMOND CANTU,
MAYOR,
VILLAGE OF BONNEY, TEXAS**

ATTEST:



**KAYLEE WINANS,
VILLAGE CLERK,
VILLAGE OF BONNEY, TEXAS**

