

Motion was made by S. Wolff, seconded by  
Bill Steinhilber, that the following Ordinance be passed:

NO. 21

FLOOD DAMAGE PREVENTION ORDINANCE BY THE TOWN  
OF WHISPERING OAKS, TEXAS, PROVIDING FOR  
AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND  
OBJECTIVES; PROVIDING FOR SAVINGS CLAUSE, AND  
REPEALING ALL ORDINANCES IN CONFLICT.

I.

SECTION A. AUTHORIZATION.

(1) WHEREAS, the National Flood Insurance Act of  
1968, and the Amendments, have been passed by the Congress of  
the United States, thereby authorizing the National Flood In-  
surance Program (42 USC 4001-4128);

(2) WHEREAS, the various states were designated to  
provide rules and regulations for the operation of said Act  
and Program;

(3) WHEREAS, the Legislature of the State of Texas  
has by Statute detailed the responsibility to local governmental  
units to adopt regulations designated to minimize flood loss.

SECTION B. FINDINGS OF FACT.

(1) WHEREAS, the flood hazard areas of the Town of  
Whispering Oaks are subject to periodic flooding which may  
result in loss of property, health and safety hazards, disruption  
of commerce and governmental services, and extraordinary public  
expenditures for flood protection and relief, all of which ad-  
versely affect the public health, safety and general welfare.

(2) WHEREAS, these flood losses are created by the  
cumulative effect of obstructions in flood plains which cause  
an increase in flood heights and velocities, and by the occu-  
pancy of flood hazard areas by uses vulnerable to floods and  
hazardous to other lands because they are inadequately elevated,  
floodproofed, 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 harm and private losses in special flood hazard areas with provisions designed to:

- (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 public facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control, in the sense of providing authoritative guidance, the alteration of natural flood plains, their protective barriers and stream channels;
- (4) Prevent the construction of barriers which will divert flood waters and subject other lands to greater flood hazards;
- (5) Control, in the sense of authoritative guidance, development which would cause greater erosion or potential flood damage such as grading, dredging and excavation.

SECTION D. OBJECTIVES.

The objectives of this Ordinance are:

- (1) To protect human life and property exposed to the hazards of flooding;
- (2) To ensure that potential property owners are notified if property is in a special flood hazard area;
- (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, streets and bridges located in special flood hazard areas;
- (6) To minimize expenditure of future public money for costly flood control projects.

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF  
THE TOWN OF WHISPERING OAKS, TEXAS:

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## II.

### 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.

- (1) Appeal--means a request for a review of the Local Administrator's interpretation of any provision of this Ordinance or a request for a variance.
- (2) Area of Shallow Flooding--means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet. This condition occurs where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
- (3) Area of Special Flood Hazard--is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.
- (4) Base Flood--means the flood having a one percent chance of being equalled or exceeded in any given year.
- (5) 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, excavations or drilling operations.
- (6) Floor or Flooding--means a general and temporary condition of partial or complete inundation of normally dry areas from:
  - (a) The overflow of inland waters.
  - (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (7) Flood Hazard Boundary Map (FHBM)--means an official map of a community, issued by the Federal Insurance Administration, where the areas within the boundaries of special flood hazards have been designated as Zone A.
- (8) Flood Insurance Rate Map (FIRM)--means an official map of a community, on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
- (9) Flood Insurance Study--is the official report provided by the Federal Insurance Administration. The report contains flood profiles, the

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water surface elevation of the base flood, as well as the Flood Hazard Boundary-Floodway Map.

- (10) Floodway--means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- (11) Habitable Floor--means any floor usable for living 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".
- (12) Mean Sea Level--means the average height of the sea for all stages of the tide.
- (13) Start of Construction--means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 as part of the main structure. For a structure without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.
- (14) Structure--means a walled and roofed building that is principally above ground.
- (15) Substantial Improvement--means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- (16) Variances--is a grant of relief to a person from the requirements of this Ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Ordinance.

III.

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 Town of Whispering Oaks.

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Insurance Administration on its Flood Hazard Boundary Map (FHBM), # \_\_\_\_\_, dated \_\_\_\_\_, any 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 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: (1) considered as minimum requirements; (2) liberally constructed in favor of the governing body; and (3) 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 man-made 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 Town of Whispering Oaks, or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

#### IV.

##### ADMINISTRATION

###### SECTION A. DESIGNATION OF LOCAL ADMINISTRATOR.

The Local Administrator is hereby appointed to administer and implement the provisions of this Ordinance.

###### SECTION B. DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR.

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

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this Ordinance.
- (2) Review, approve or deny all applications for development permits required by III, Section C of this Ordinance;
- (3) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required;
- (4) 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 Local Administrator shall make the necessary interpretation.
- (5) Notify adjacent communities and the proper coordinating agency of the State of Texas prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;

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- (6) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (7) When base flood elevation data has not been provided in accordance with III, Section B, the Local Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State, or other source, in order to administer the provision of V.

SECTION C. PERMIT PROCEDURES.

(1) Application for a Development Permit shall be presented to the Local Administrator on forms furnished by him 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, 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 proposed structures;
- b. Elevation in relation to mean sea level to which any non-residential structure shall be flood-proofed.
- c. A certificate from a registered professional engineer or architect that the non-residential floodproofed structure shall meet the flood-proofing criteria of V, Section B (2);
- d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of a proposed development.

(2) Approval or denial of a Development Permit by the Local 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;

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- 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;
- j. The relationship of the proposed use to the comprehensive plan for that area.

SECTION D. VARIANCES PROCEDURES.

- (1) The Town Council of Whispering Oaks, as established by Resolution, shall hear and render judgment on requests for variances from the requirements of this Ordinance.
- (2) The Town Council 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 Local Administrator in the enforcement or administration of this Ordinance.
- (3) Any person or persons aggrieved by the decision of the Town Council may appeal such decision in the courts of competent jurisdiction.
- (4) The Local Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Insurance Administration 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 section.
- (6) 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 the relevant factors in Section C (2) of this article have been fully considered. As the lot size increases beyond the one-half 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 Town Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (I, Sections C and D).

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

(9) 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) a showing of 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 applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation \_\_\_\_\_ feet 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.

V.

#### PROVISIONS FOR FLOOD HAZARD REDUCTION

##### SECTION A. GENERAL STANDARDS.

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

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

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- (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 and utility equipment resistant to flood damage;
- (4) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (5) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters; and,
- (6) On site 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 hazards where base flood elevation data has been provided, the following provisions are required:

- (1) Residential Construction - New Construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Local Administrator that the standard of this subsection, as proposed in IV, Section C (1) (a), is satisfied.
- (2) Non-residential Construction - New Construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall submit a certification to the Local Administrator that the standards of this subsection as proposed in IV, Section C (1) (c), are satisfied.

#### SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS.

- (1) All subdivision proposals shall be consistent with the provisions of this Ordinance.
- (2) All proposals for the development of subdivisions shall meet Development Permit requirements in accordance with the provisions of this Ordinance.

(3) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or 5 acres, if not otherwise provided pursuant to the provisions of this Ordinance.

(4) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

VI.

SAVINGS CLAUSE

If any section, sub-section, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional or invalid, such unconstitutionality shall not affect the remaining portions of this Ordinance.

VII.

REPEALING ALL ORDINANCES IN CONFLICT

All Ordinances, or parts of Ordinances and motions in conflict with the provisions of this Ordinance are hereby expressly repealed.

PASSED AND APPROVED this the 14 day of

May, A. D. 1977.

ATTEST:

Brenda A. Heint  
Town Secretary

James M. Martin  
Mayor

APPROVED AS TO FORM AND CONTENT:

Geo. B. Darden  
Town Attorney

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