

This is a business meeting of the governing body for the City of Herington. There is no implied or expressed right for persons outside the governing body to speak or voice their opinion unless specifically recognized by the chair.

**Regular Meeting
February 6, 2024
6:00 p.m.**

1. Pledge of Allegiance

2. Call to Order

3. Public Forum

4. Approval of Agenda

Motion _____ Seconded _____ Action _____
Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

5. Consent Agenda

- a. Minutes of the Regular Commission Meeting January 16, 2024
- b. Janet Wade and Marcus Hawkes Renewal of Membership to CVB (2-year term)

6. Engagement Letter for Lindburg, Vogel, Pierce, Faris for Audit services for the 2023 year – Audit to start 4/29/2024

Motion _____ Seconded _____ Action _____
Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell
Mayor Gares

7. Receive and File Department Head Presentations and 2023 Updates

- a. Water Treatment
- b. Water Distribution
- c. Sewer
- d. Neighborhood Services Update

8. Consider bid for repair of Raw Water line near Railroad, authorize Purchase of \$21,453.31 from Core & Main to be paid from Water Distribution and Water Treatment Budget

Motion _____ Seconded _____ Action _____
Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

9. Consider funding to replace Raw Water Line near Railroad, for an amount not to exceed \$65,000 to be paid from Water Treatment Budget, Water Distribution Budget, and City Reserve Funds

(Attachments Pending)

Motion _____ Seconded _____ Action _____
Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

10. Consider Updated FEMA Floodplain Ordinance

Motion _____ Seconded _____ Action _____

Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

11. Ampride ROW Vacation Consideration and Authorization of Survey (**Attachments Pending**)

Motion _____ Seconded _____ Action _____

Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

12. Consider and Approve Agreement for Lift Station Maintenance with Casey's

Motion _____ Seconded _____ Action _____

Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

13. Consider Approval of Finalized UPTICC Agreement

Motion _____ Seconded _____ Action _____

Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

14. Consider dates for Governing Body Retreat in April 2024

15. City Manager Comments

16. Commissioner Comments

17. Adjourn

Motion _____ Seconded _____ Action _____

Commissioner Naylor, Commissioner Scarff, Commissioner McDonald, Commissioner Bell,
Mayor Gares

To join the City Commission meetings from your computer, tablet, or smartphone, go to
<https://www.youtube.com/channel/UCbvSBw6l4w85XQHXSX0S1BXg> Public Forum Comments can be
dropped in the deposit box or emailed to cityoffice@cityofherington.com.

**Regular Meeting
January 16, 2024
6:00 p.m.**

The Herington City Commission met on the above date and time in the commission chambers at city hall. In attendance were Mayor Eric Gares, Commissioner Robbin Bell, Commissioner Dan McDonald, Commissioner Dalton Scarff, Commissioner Cynthia Naylor, City Attorney Brad Jantz, City Clerk Megan Lawrenz, Hilltop Director Lori Dornbusch, Light Superintendent David Kahle, Neighborhood Services Director James Masters, Chief of Police Chad Langley and Fire Chief Andrew Avantagiato. Also in attendance were Christina McDonald, Rhonda Rice, and David Leithoff.

The meeting opened with the pledge of allegiance.

Mayor Gares called the meeting to order.

Public Forum – None.

Approval of Agenda - Remove 5d from the consent agenda and make it 5.1. Remove 7b. Add 6a – Raw Waterline- Commissioner Naylor made a motion to approve the agenda with the listed changes, seconded by Commissioner Bell. Motion carried 5-0.

Consent Agenda – Commissioner Bell made a motion to approve the following consent agenda items; Minutes of the Regular Commission Meeting January 2, 2024, designating First National Bank of Hope and Central National Bank as the City of Herington official banks, and designating the Dickinson County News Times as the City of Herington official paper, seconded by Mayor Gares. Motion carried 5-0.

5.1 - Engagement Letter for Lindburg, Vogel, Pierce, Faris for Audit services for the 2023 year. After discussion the Commissioners requested that staff contact the Auditors and try to schedule their services sooner.

Consider Request for Emprise Bank to Enter Payment Plan for Outstanding Hospital Utilities for \$18,218.14 for the months of November and December 2023. All bills will be paid in the future unless 30 days' notice is given. Commissioner Bell made a motion to approve the payment plan between Emprise Bank and the City of Herington for \$18,218.14, seconded by Commissioner McDonald. Motion carried 5-0.

6a. Raw water line – Staff informed the commission that someone could come tomorrow to inspect the raw water line and give an estimate to bore under the railroad line to replace the pipes. The city has permission from the railroad to do so. The water department has approximately \$45,000 in the budget for this project. Commissioner Bell made a motion to approve the inspection and get bids to repair, seconded by Commissioner Naylor. Motion carried 5-0.

Receive and File Department Head Presentations and 2023 Updates -

Hilltop and Community Building Director –

Accomplishments in 2023 – Projects and replacements for 2024/2025

Hilltop Community Center:

2023 Hilltop Center Evaluation and Assessment-

An individual on the NC-FH AAA board walks through the whole facility with myself, checking the building as a whole, proper notices for employees and patrons, the safety of all areas, cleanliness, up to code in kitchen, dining room, restrooms, food storage, etc.

Our facility had an excellent assessment score! Letter included!

Kansas Department of Agriculture and Food inspection-2023

Yearly Inspection to keep in compliance for food license. We had **0 violations**, which is very rare for they usually find one or two even small things to ding a place on. ☺ Cris Bayes is on top of our facilities kitchen and does a wonderful job and keeping everything safe and up to code.

KDOT 2023 Audit on Public Transportation Bus-

This audit is conducted every 3-4 years at each transportation site. Auditors come, check all KDOT bus logs, reports, employees information including drug and alcohol procedures, financial logs, inspect the bus for any safety issues or items not updated.

The bus is inspected by the KDOT Transportation Inspector once a year. Both transportation bus drivers, Ron Gabe and Rick Hart are really great at helping keep the bus clean and doing pre and post trip inspections each day. They both are very caring and always are willing to help out our customers.

We had a couple small items that need to be completed within 6 months, but other than that we are in compliance. The need for an infant seat which was addressed, we will either partnership with police and fire or purchase one ourselves. A grab handle is also needing replaced. It is ordered and Dwayne Dittman will be installing that.

KDOT SFY 2025 5311 Application Grant for Operation and Administrative Assistance was completed and submitted by myself in November 2023. This application grant is written and submitted every year to insure operating assistance and reimbursement for the Herington City Public Bus system. KDOT reimburses 70-80% for all operating expenses which include, fuel, insurance, advertising, maintenance, drivers payroll and some additional admin assistance.

All facilities

My department was without a reliable custodian for all the buildings for many months. With the new hire of B. Federle, we have been doing major deep cleaning here at the Hilltop Center, at the Community Building and the Homestead Village Apartments and also the City Office.

The community building has been totally repainted within. All white table and chairs are being deep cleaned and will take several months. It's a project that is worked on as time allows. With the purchase of a new steam cleaner, the process is going rather easy and quicker.

2024/2025 : Research for flooring company's to replace, refinish and or strip and wax the Community Building concrete flooring and tile floors throughout the building. Looking at a sealant or epoxy for large floor.

Both the Hilltop Center and Community Building kitchen hood systems were cleaned by a professional company out of Salina. This included all vents and exhaust fans.

The overhead hood system at both facilities were inspected by Air and Fire and they were both in compliance and alarm system at Hilltop is in excellent condition.

In 2023 we were gifted with a donation for a new ice machine for the Hilltop Center. Other donations for the Hilltop and Homestead Village were several large shelf (storage) units. Four units to be exact.

At the Homestead Village Apt. and Hilltop Apt. all units are being updated for new tenants coming in. It's an ongoing process.

Josh Alexander is the Maintenance Tech and does a terrific job and With the help of our SER maintenance assistant, Allen Nees, they both are working daily at getting all units updated, between snow removal, appliance replacements, heating and air unit upgrades, weather related issues and other projects that arise. As apartments are being updated, we are implementing a replacement plan for all

equipment and appliances throughout all facilities. In 2023 we have replaced and updated the Hilltop Dining/Kitchen heating and air unit, a unit at the Hilltop and two units at the Homestead Village. Also on the replacement agenda are new appliances. As of the last year we have added several new refrigerators, dish washers, and electric ranges. These are on a rotation process.

At the Hilltop over 50% of lighting has been switched over to LED lighting

At the Homestead Village a new concrete drive and parking area was replaced for a four garage area. Other concrete work and low elevation areas are planned for upgrades in the 2024/25 year.

Homestead Village Clubhouse renovation/upgrade is on the 2024/25 agenda too.

Water Distribution Department - Postpone

Sewer Department Supervisor - Postpone

Electrical Department Supervisor - Electric Department

1/5/24

I am David Kahle, Electric Superintendent for the City Herington. I have worked for the city for 25 years. The electrical department maintains and upgrades the electrical distribution system. There are 3 full-time employees in the department. The meter reader position is split between the electrical department and the water department.

Daily duties include maintenance of equipment, safety checks on our PPE (rubber gloves, rubber sleeves) and making sure we have adequate supplies to complete the daily duties or projects. We take care of work orders and trim tree branches back away from the electric lines. We check on the infrastructure for damage that could cause an outage or potentially a danger to someone. This would include repairs poles, crossarms, transformers, secondary services to residential and Businesses. Our duties also include exchanging out old electric meters and updating them for new radio read meters. We should have all the electric meters replaced this year, providing we receive all of the meters this year. We maintain the camping pedestal at both lakes. The department is working to replace all the street light over to LED fixture. If another department is in needs help, we try to work with one another to get the jobs done.

Major accomplishments / projects for 2023.

Installation of new EV charger station by Pizza Hut.

Replaced a pole at alley entrance on Trapp Street and between Broadway and 1st street. The pole has 3 different circuits on it. We were able to do this and keep all the customers on, which includes most uptown businesses.

The purchase of a new bucket truck. It will be approximately 36 months for delivery.

Approval for new controls for the existing generator and new generator. The new generator will take approximately 3 years to receive. The city is working with KMEA to have the new generator and controls installed. The plan is to install the new controls sometime in June or July 2024.

The installation of the walking path from Logan Steet to the school parking lot along N C street. This was in coordination with the Street Department to clear all trees and build the path. Lighting for the walking path was also completed.

Projects for 2024

Finish installing the underground electrical for the new Casey's building. Current completion is scheduled for the end of January.

Replace the poles at the raw water pump house and update the metering for it. This will have to be coordinated with the water plant department.

Replace the transformer poles behind city. This will require the City Office and School Board Office to be without power for an extended time. A shut down will be required, unless the work can be done on a weekend. This project will require at least 2 days.

Relocation for the transformer bull pin to the east side of electrical storage building will require concrete, and a fencer installed. I am working with the Water Department to relocate our storage of supplies from their current location.

Finish the replacement of the South Broadway Island Street lights. This project started several years ago was put on hold. We have most of the material needed to finish the project.

Continue replacing old or damaged poles in the distribution system. We will concentrate on the area between Broadway and 1st Street, starting at Trapp Street north to Arnold Street.

Continue to place porcelain cutouts in the distribution system. The porcelain cutouts are failing and causing outages. Several other towns are experiencing the same problem.

Neighborhood Services Director –

There were 107 complaints and 695 inspections for the year 2023.

Grass Violations

1. Implemented new grass ordinance.
2. 220 Grass inspections
3. 125 Grass violation written.
4. 53 Cut orders issued.
5. 43 yards mowed.
 - a. The city mowed 35 yards.
 - b. Contractors mowed 8 yards.

City Code Violations

1. Wrote 27 violations.

Building permits

1. Issued a total of 148 permits with 201 inspections.
2. Issued 49 building permits with 61 inspections.
3. Issued 42 electrical permits with 59 inspections.
4. Issued 16 mechanical permits with 24 inspections.
5. Issued 31 plumbing permits with 49 inspections.
6. Issued 7 demolition permits with 7 inspections.
7. Issued 2 sign permits with 1 inspection.

Electrical Service turn on.

1. 66 electrical service inspections

57 structural building inspections

There were 5 dangerous structure hearings.

1. 3 structures were ordered demolished.
2. 2 structures ordered repaired.

Worked with the Board of Construction, Trades, and Appeals for a new ordinance on licensing and fees.

Helped with new ordinance for manufactured houses.

901 E Arnold, Herington Park LLC

Manufactured house on lots #1, #19, and #23 ordered to removed.

Owners also are removing manufactured houses on lots #10, #20, and #22.

Police Chief -

Fire Chief -

Commissioner Comments

Commssioner Naylor _ Hopes everyone is staying warm. Appreciates staff keeping streets clean.

Commissioner Scarff - None.

Commissioner McDonald – Asked if the city has a plan in place to open the Community Building for shelter if needed.

Commissioner Bell – Nothing

Commissioner Gares - Nothing.

Adjourn – Commissioner Bell made a motion to adjourn, seconded by Commissioner Naylor. Motion carried 5-0.

Megan Lawrenz, City Clerk

1/4/2024

Mayor Gares

Herrington city commissioners

My name is Leo Schlesener, this is my profile as an employee for the city of Herrington, and a brief job summary for me and my achievements for 2023 and goals for 2024. I was summer help for 6 years prior to going full-time. I have been employed with the city for 35 years. During that time, I was Street Superintendent for 25 years. Cemetery Sexton for 29 years. Water plant superintendent for 1 ½ years, and a volunteer firefighter for 30 years and currently holding the position of assistant chief.

In August of 2022 I assumed the responsibility of Water plant superintendent. I have 1 employee besides myself that operates the plant. That is Andrew Reese. Since that time, we have operated the plant 24 hours a day. We maintain chemical feed levels, do maintenance on the equipment, do lab tests daily, and take samples for state testing. We have done a lot of cleaning up after the construction of the plant and made additional upgrades to the plant that were not done due to cuts in the project. Such as replaced the main concrete entrance, added Ozone injection point access, extended the retaining wall behind the plant, and got additional training and maintenance for us on the Ozone system. We also had several leaks on the raw water line that brings water from the lake to the plant. With those repairs brings me to the goals for 2024. The main goal for me is to work very closely with Mr. Moddie and get him any additional information that he might need to keep his work of getting the city a grant to replace the raw water line. He has completed the first step in getting the grant. My next task will be to get the whole town inventoried for lead and copper services. K.D.H.E. is mandating that all water systems have this done by October 2024. Cody Oswald, the water distribution superintendent, and I are working together to get this done. We will keep you updated on that process. K.D.H.E. is also strongly recommending that we install a backup generator at the pumphouse at the lake, you will be updated on this as well. The final item is to build a building to store our truck, forklift, and chemicals, since those items are not to be stored inside the plant, and in the design of the plant, storage for these items were not included in the plan.

I hope that this information is helpful to you about who I am and what we do at the plant. The office for the plant is at 435 south 5th street. Our normal hours are M-F 7:00-4:00 My cell phone number is 785-258-0426 If you ever have any questions or want to stop by you are welcome at any time.

Sincerely

Leo Schlesener

Water Distribution 2023 Accomplishments and 2024 Projects

My name is Cody Oswald. I have worked for the City of Herington for 5 years in the water distribution. In February of 2023 I took over as water distribution supervisor.

Water Distribution has two full-time employees. The meter reader position helps in my department when they are not reading meters or doing their day-to-day duties. We are responsible for water and sewer lines including any repairs or new installations of lines and services. We also do all locates of water and sewer lines when someone calls dig safe.

- For 2023 we finished our A street water line project. This included finishing hooking 20 water services to the new water main. Also, we were able to abandon 4 blocks of the old water line and remove two old fire hydrants.
- With the new Casey's building being built, we had contractors install a new 4-inch water main from the 800 block of East Trapp to the east side of the Casey's. Where we also had them install a fire hydrant. Once they finished installing the main the city went back and hooked up 6 houses, 1 church and 2 meters for Caseys. That allowed us to abandon the old line the was feeding those houses.

2024 Projects

- Install a fire hydrant at the airport to help fill tanker 95. Installing this fire hydrant will also help with fire protection. This project will consist of installing approximately 400 feet of 6-inch water line.
- I would like to start installing a new water line in north A street from Vine Street to Chestnut. We see a lot of water line breaks in this stretch of line.
- Lastly, I would like to start installing more water meter radio reads. The city has had a lot of the older water meters changed to the new style. This will help with the time it takes to read meters for monthly billing.

City of Herington

City Manager and Commissioners,

The Wastewater Treatment Facility (WWTF) is operated by 2 full time city employees Jason Alt and Cliff Stokes. Jason has been with the city for 24 years and has a Class 2 certification in both water and wastewater. Cliff has been with the city for 11 years and is working on his Class 1 certification. The facility runs 24 hours a day 7 days a week and the daily operations of the plant consists of daily readings on influent and effluent flow, removing rags and other debris out of the system, wasting sludge to the digester, dewatering biosolids and disposing of it on crop land, cleaning bulbs on the UV system weekly, monthly reports to KDHE and doing maintenance on all of the equipment.

Our facility is an Activated Sludge system which requires dissolved oxygen (DO) to break down the waste. The influent flow comes into the plant and the screw pumps lifts the raw sewage up 15ft and then through a manual bar screen and then through a Parshall flume where it is metered. Next it goes to a division box where the flow is split 4 ways and then to the aeration basin which has 4 zones. From there it goes to one of the two clarifiers to start settling out the solids. We return some of the solids back to the aeration basin to keep the biological process going and we will waste some solids to the digester to get it out of the system. The solids get pumped to the screw press to get dewater. The clear water goes over the weirs of the clarifier to the UV system to get disinfected and then discharged into the creek.

The WWTF was upgraded to aeration in 1978 and all the major equipment is still being used. We have a hard time finding parts for the screw pumps. In 2020 we did phase 1 of the project and installed a screw press to dewater sludge instead of liquid applying sludge to the crop land. In 2023 we started the process of phase 2 of the project which will include replacing the screw pumps (3) with either screw pumps or submersible pumps, installing a mechanical bar screen for removing rags, installing (2) blowers for aeration and all piping, valves and diffusers, DO probes in aeration basin to monitor levels, a generator that will power all the facility, manure spreader and replace all the major electrical components. Around 2030 is scheduled to be phase 3 of the project which will include new waste pump (1), return pumps (2), rebuild the clarifiers and upgrade the UV system.

In 2024 we hope to have started the phase 2 upgrades because the equipment is old and wore out. If you have time someday stop by the facility and we will give you a tour.

Jason Alt

Wastewater Supervisor

DRAFT

Run Date: 1/31/24

Quote



Customer #	137008
Order #	U314385
Date Ordered	01/31/24
Job #	
Job Name	
Customer Reference	LEO
Purchase Order #	12"WATER PLANT QUOTE
Method of Shipment	OUR TRUCK
Contract Order #	0000000
Ordered By	
Ship Via	CORE & MAIN LP

Sold To:
 HERINGTON KANSAS CITY OF
 PO BOX 31
 HERINGTON, KS 67449 0031

Ship To:
 HERINGTON KANSAS CITY OF
 17 NORTH BROADWAY
 HERINGTON, KS 67449

Branch:
 MCPHERSON KS
 Branch - 344
 600 Old 81 Highway
 McPherson, KS 67460

Phone: 620-241-3865

Bid Seq#	Product Code	Description	Qty Ordered	Qty Shipped	Qty B/O	Net Price	UOM	Ext Price
	0312021YM	12 SDR21 PR200 YELOMINE PIPE	240			48.36000	FT	11606.40
	0312021	12 PVC SDR21 PR200 PIPE (G)	80			41.01000	FT	3280.80
	21I124M	12 MJ 45 C153 IMP	4			354.20000	EA	1416.80
	21I12T120M	12 MJ TEE C153 IMP	1			567.00000	EA	567.00
	21IAMMJR12	12 MJ REGULAR ACC SET (I)	1			77.44000	EA	77.44
	21IAMMJT12	12 MJ TRAN ACC SET IMP	11			78.97000	EA	868.67
	96TW12PE45B	#12 CCSX500 BLUE PE45 TRACER W	500			.17000	FT	85.00
	/80017650742	ESW1218 END SEAL WRAP	2			88.10000	EA	176.20
	/80017650743	CSS8-1218-SS-CR 8"WIDE CASING	30			112.50000	EA	3375.00
		SPACER 2X2 PATTERN						

DRAFT

Terms in accordance with shipping manifest.

Special Instructions/Comments:
 WARNING-HEAVY ITEM-LIFT ASSISTANCE REQ'D

Total Ordered:	21453.31
Tax Amount:	.00
Other Charges:	.00
Total:	21453.31

FLOODPLAIN MANAGEMENT ORDINANCE
Pursuant to 44 CFR § 60.3 (d) - Regulatory Floodway Identified,
K.S.A. 12-766, and K.A.R. 5-44-1 through 5-44-7

ORDINANCE No. _____

ARTICLE 1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES

SECTION A. STATUTORY AUTHORIZATION

1. *Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption*

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on December 5, 2023.

2. *Kansas Statutory Authorization*

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare of the public. Therefore, the governing body of The City of Herington, Kansas, ordains as follows:

SECTION B. FINDINGS OF FACT

1. *Flood Losses Resulting from Periodic Inundation*

The special flood hazard areas of the City of Herington, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

2. *General Causes of the Flood Losses*

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

3. *Methods Used To Analyze Flood Hazards*

The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

- a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated March 13, 2024, as amended, and any future revisions thereto.
- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
- e. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

SECTION C. STATEMENT OF PURPOSE

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

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

ARTICLE 2 GENERAL PROVISIONS

SECTION A. LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of the City of Herington, in Dickinson County, Kansas identified as numbered and unnumbered A Zones, AE, AO and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated March 13, 2024, as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the City of

Herington or its duly designated representative under such safeguards and restrictions as the City of Herington or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

SECTION B. COMPLIANCE

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

SECTION C. ABROGATION AND GREATER RESTRICTIONS

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

SECTION D. INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

SECTION E. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of the City of Herington, any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

SECTION F. SEVERABILITY

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

ARTICLE 3 ADMINISTRATION

SECTION A. FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured or mobile homes, in the areas described in Article 2, Section A. No person, firm, corporation, or unit of government shall initiate any development or substantial-

improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

SECTION B. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Building Official is hereby appointed to administer and implement the provisions of this ordinance.

SECTION C. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

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

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

SECTION D. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the floodplain administrator;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

ARTICLE 4 PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured or mobile homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one percent annual chance or 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured or mobile homes, and other developments shall require:

- a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Construction with materials resistant to flood damage;
- c. Utilization of methods and practices that minimize flood damages;
- d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
- f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage;
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

5. *Storage, Material, and Equipment*

- a. Storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

6. *Nonconforming Use*

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

- a. If such structure, use, or utility service has been or is discontinued for 24 consecutive months, any future use of the building shall conform to this ordinance.

- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

7. *Accessory Structures*

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 600 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; the accessory structure meets the following floodplain management requirements; and a floodplain development permit has been issued. Wet-floodproofing is only allowed for small low cost structures.

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

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:

- a. Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).
- b. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- c. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance.
- e. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.
- f. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E (2) of this ordinance. No permits may be issued for accessory

structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.

- g. Equipment, machinery, or other contents must be protected from any flood damage.
- h. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
- i. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

8. *Agricultural Structures*

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

9. *Critical Facilities*

- a. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated at least one (1) foot above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below a minimum of one (1) foot above the 500-year 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 the effects of buoyancy. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).
- b. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
- c. No critical facilities shall be constructed in any designated floodway.

10. *Hazardous Materials*

All hazardous material storage and handling sites shall be located out of the special flood hazard area.

11. *Cumulative Improvement*

A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last two (2) calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with Article 4, Section B(1) which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

SECTION B. SPECIFIC STANDARDS

1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:

a. *Residential Construction*

New construction or substantial-improvement of any residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. **Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor.** The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

b. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

c. *Enclosures Below Lowest Floor*

Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry

and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

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

SECTION C. MANUFACTURED or MOBILE HOMES

1. All manufactured or mobile homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured or mobile 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.
2. Require manufactured or mobile homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured or mobile home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
3. Require that manufactured or mobile homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C(2) of this ordinance, be elevated so that:
 - a. The lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

SECTION D. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

1. *AO Zones*
 - a. All new construction and substantial-improvements of residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
 - b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.
2. *AH Zones*
 - a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
 - b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

SECTION E. FLOODWAY

Located within areas of special flood hazard established in Article 2, Section A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard

engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.

3. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.
4. If Article 4, Section E(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Article 4.
5. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4, Section A(2).

SECTION F. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days, *or*
2. Be fully licensed and ready for highway use*; *or*
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

*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.

SECTION G. CONDITIONS FOR APPROVING TEMPORARY STRUCTURES

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

1. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
 - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
 - b. Denial of the temporary floodplain development permit will create an undue hardship on the property owner;
 - c. Community has adopted up to date NFIP and building regulations to direct placement and removal of the temporary structure; and,

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

ordinance and shall be illegal, non-conforming uses and shall be summarily removed and abated.

- j. If the temporary structure is to be returned to its previously occupied site, the process for issuing a temporary floodplain development permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

ARTICLE 5 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

SECTION A. ESTABLISHMENT OF APPEAL BOARD

The Board of Zoning Appeals shall act as the Appeal Board as established by the City of Herington and shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

SECTION B. RESPONSIBILITY OF APPEAL BOARD

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Article 5, Section A.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

SECTION C. FURTHER APPEALS

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

SECTION D. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;

6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

SECTION E. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. 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 elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, repair, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge or base flood elevation would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

7. A community shall maintain a record of all variance actions, including justification for their issuance.
8. 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 the criteria of items 1 through 6 of this section are met, and 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.

SECTION F. CONDITIONS FOR APPROVING VARIANCES FOR AGRICULTURAL STRUCTURES

New agricultural structures should be built to standards specified under Article 4, Section B(1)(b) of this ordinance pertaining to non-residential structures unless a variance is granted to wet floodproof the structure at grade. Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Article 5, Sections D and E of this ordinance.

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

1. All agricultural structures considered for a variance from the floodplain management regulations of this ordinance shall demonstrate that the proposed varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farmhouses, cannot be considered agricultural structures.
2. Use of the proposed structures must be limited to exclusively agricultural purposes in a Zone A, AE, A1-30, AH, AO, floodplain as identified on the community's Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map (FHBM).
3. Proposed structures must not increase risks and pose a danger to public health, safety, and welfare if flooded contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquefied natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
4. Proposed structures have low damage potential (amount of physical damage, contents damage, and loss of function).
5. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (3)(b) of this ordinance.
6. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Article 4, Section A (4)(a) of this ordinance. All

the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

7. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance.
8. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with Article 4, Section B (1)(c) of this ordinance.
9. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this ordinance. No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
10. Major equipment, machinery, or other contents must be protected from any flood damage.
11. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.
12. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
13. Wet-floodproofing construction techniques must be reviewed and approved by the community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

Exceptions to the variance requirement for agricultural structures apply only to those that are substantially damaged by flooding and agricultural structures that are repetitive loss structures. These are allowed to be permitted to be repaired or restored to pre-damage condition, provided the following are satisfied:

1. If substantially damaged, the substantial damage determination is based only on the cost to repair damage caused by flooding to pre-damage conditions.
2. The proposed repair or restoration does not change the size of the structure and does not significantly alter the nature of the building. With the exception of costs associated with wet-floodproofing in accordance with Article 5, Section F 1 through 13, proposals that include work beyond or in addition to that necessary to repair or restore the structure to pre-damage condition must be regulated as substantial improvements.

3. The repaired or restored structure will continue to be an agricultural structure, as defined in these regulations.
4. Owners are notified, in writing, that agricultural structures approved under this section:
 - a. Will not be eligible for disaster relief under any program administered by the Federal Emergency Management Agency or any other Federal agency.
 - b. Will have National Flood Insurance Program flood insurance policies rated based on the structure's risk.
 - c. May be denied National Flood Insurance Program flood insurance policies if repairs do not include the wet floodproofing construction requirements of Article 5, Section F 1 through 13 of this ordinance.
5. Wet floodproofing construction requirements. When owners elect to wet-floodproof flood-damaged agricultural structures as part of repair or restoration to pre-damage condition, the structure shall comply with the standards of Article 5, Section F 1 through 13 of this ordinance.

ARTICLE 6 VIOLATIONS

1. The floodplain administrator may make reasonable entry upon any lands and waters in the City of Herington for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.
2. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.
3. The floodplain administrator shall provide written notice of a violation of this ordinance to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.
4. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Herington or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.
5. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, if the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

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

7. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1617f).

ARTICLE 7 AMENDMENTS

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

ARTICLE 8 DEFINITIONS

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

"100-year Flood" *see "base flood."*

"Accessory Structure" means the same as *"appurtenant structure."*

"Actuarial Rates" *see "risk premium rates."*

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Agricultural Commodities" means agricultural products and livestock.

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

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

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

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent 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 or greater chance of flooding in any given year. Also referred to as Special Flood Hazard Area (SFHA).

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

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

"Basement" means any area of the structure having its floor subgrade (below ground level) on all sides.

"Building" *see "structure."*

"Chief Engineer" means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

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

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

"Elevated Building" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

"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 waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"Flood Elevation Determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards.

"Flood Fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

"Flood Hazard Map" means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

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

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

"Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (see "flooding").

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

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

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

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

"Floodway Encroachment Lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

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

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

"Lowest Floor" 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 floodproofing design requirements of this ordinance.

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

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value" or "Fair Market Value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program (NFIP), the National American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Numbered A Zone" means a special flood hazard area where the Flood Insurance Rate Map shows the Base Flood Elevation.

"One percent annual chance flood" *see "base flood."*

"Participating Community" also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Reasonably Safe From Flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

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

"Remedy A Violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

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

"Special Flood Hazard Area" *see "area of special flood hazard."*

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

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

"State Coordinating Agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of

the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Substantial-Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent 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 50 percent 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 (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *"historic structure,"* provided that the alteration will not preclude the structure's continued designation as a *"historic structure."*

"Temporary Structure" means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, **but at no time shall it include manufactured homes used as residences.**

"Unnumbered A Zone" means a special flood hazard area shown on either a flood hazard boundary map or flood insurance rate map where the base flood elevation is not shown on the FIRM. Commonly referred to as Zone A in Kansas meaning a non-detailed study.

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

"Violation" 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 by this ordinance 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 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

ARTICLE 9 CERTIFICATE OF ADOPTION

This Floodplain Management Ordinance for the community of Herington, Kansas.

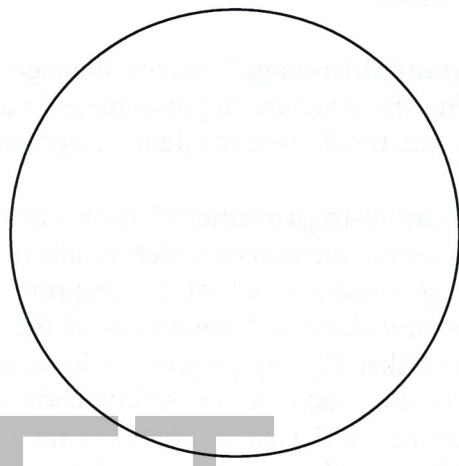
PASSED AND ADOPTED by the Governing Body of Herington, Kansas.

This _____ day of _____, 20_____.

Chief Engineer Draft Approval Seal Here:

This 5th **APPROVED** day of December, 2023
Jana Samath for Earl Lewis
Earl D. Lewis, Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

Community Approval Seal Here:



APPROVED:

DRAFT

Signature of Chief Executive Officer/Chief Elected Official Date

Chief Executive Officer/Chief Elected Official Name (Typed/printed) Title

ATTEST:

Signature of Recording Clerk Date

Recording Clerk Name (Typed/printed) Title

Published in official news publication or on website _____.

LIFT STATION MAINTENANCE AGREEMENT

THIS LIFT STATION MAINTENANCE AGREEMENT, made this ____ day of _____, 2024 by and between Casey's Retail Company, an Iowa Corporation with its headquarters located at One S.E. Convenience Boulevard, Ankeny, Iowa (hereinafter referred to as "Casey's"), and the City of Herington, 17 N. Broadway, Herington, KS 67449, a municipal corporation (hereinafter referred to as the "City"),

WITNESSETH:

WHEREAS, Casey's is the owner of certain real estate commonly known as 902 E. Trapp Street, Herington, Kansas legally described on Exhibit "A" attached hereto ("Casey's Property") upon which Casey's intends to construct and operate a convenience store with motor fuel facilities; and

WHEREAS, the City has agreed to contract an extension of the City's sanitary sewer facilities to connect the Casey's Property to the City's sanitary sewer system; and

WHEREAS, the City's extension of the sanitary sewer will include a lift station (the "Lift Station") to allow the Casey's Property to connect and utilize the City's sanitary sewer system; and

WHEREAS, the parties wish to create for themselves, their heirs, successors, and assigns a maintenance agreement related to the Lift Station for the benefit of the parties, upon the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties herein agree as follows:

1. As part of the extension of the City's sanitary sewer to the Casey's Property, the City shall construct the Lift Station and electric meter on City property or KDOT right of way.
2. Following construction of the Lift Station, Casey's shall be responsible for maintenance and repair of the Lift Station, including the following elements: pumps, check valves, ball valves, pipe fittings inside the lift station, floats; guide rails and pump retrieval system; and control panel function and repair of control panel components.
3. The City shall remain responsible for any structural issues with the manhole and maintenance or repair of the forced main starting at connection to the Lift Station.
4. Nothing herein shall affect Casey's obligation to pay standard water and sewer usage fees.

5. Casey's shall be responsible for payment of electric utility service for the operation of the Lift Station.

6. Any additional tie ins to the Lift Station or use of the Lift Station by any third party or for the benefit of any other property shall be subject to Casey's written approval which may be conditioned upon Casey's satisfaction that sufficient capacity exists in the Lift Station, and any third party agreeing to share in the maintenance of the Lift Station and its share of utilities.

7. Casey's grants to the City and its agents, officers, employees, and contractors the authority, right, and privilege at any and all times, when necessary or convenient to do so, to go on the Casey's Property, and do and perform any and all acts necessary or convenient to the carrying into effect the purposes for which this Agreement is made.

8. The City grants to Casey's and its agents, officers, employees, and contractors the authority, right, and privilege at any and all times, when necessary or convenient to do so, to go on City property, as necessary, to do and perform any and all acts necessary or convenient to the carrying into effect the purposes for which this Agreement is made.

9. Casey's agrees that all lines, connections, and other appliances and structures installed by the City, including the Lift Station, shall remain the sole and exclusive property of the City.

10. Each party hereto shall protect, defend, hold harmless and indemnify the other from and against any and all claims, losses, damage or liability arising out of its use of this Agreement.

11. This Agreement shall be perpetual and run with the land so long as Casey's continues to utilize the Lift Station.

CASEY'S RETAIL COMPANY

CITY OF HERINGTON

By: _____
Kendra Meyer, Authorized Signatory

By: _____
Eric Gares, Mayor of Herington

ATTEST:

Megan Lawrenz, City Clerk

EXHIBIT A
Legal Description of Casey's Property

A tract of land located in the SE 1/4 of the SE 1/4 of Section 12, Township 16 South, Range 4 East of the 6th P.M., Dickinson County, Kansas, Described as follows; Beginning at a point on the east line of Section 12, Township 16 South, Range 4 East, said point being 180 ft. North of the Southeast corner of said Section 12, thence north along the East line of said Section a distance of 645.04 ft. to the Southwesterly right of way line of the Missouri Pacific Railroad; thence North 61 degrees 41 ft. West along said right of way line a distance of 180.88 ft. to a point on the North line of Day Street prolonged East from the City of Herington, Kansas; thence North 72 degrees 43 ft. West a distance of 40.52 ft. to a concrete monument of the East right of way line of U.S.Highway 77; thence South 23 degrees 16 ft. West along said Easterly right of way line of U.S. Highway 77 a Distance of 99 ft. to a right of way concrete monument; thence South 5 Degrees 59 ft. West along said right of way a distance of 789.08 ft. to a point on the North right of way line of U.S. Highway 56,said point being 50 ft. North of the south line of said Section 12; thence north 89 degrees 36 ft. East a distance of 218.70 ft; thence North Parallel to the East line of said Section 12 a distance of 130 ft.; thence North 89 degrees 36 ft. East parallel to the South line of said Section 12 a distance of 100 ft. to the East line of said Section 12 and to the point of beginning.

LESS and EXCEPT the following described tracts of land, to-wit:

A PERMANENT EASEMENT for controlled access highway right of way and removal of borrow material over and upon a tract of land in the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4)of Section 12, Township 16 South, Range 4 East of the 6th P.M., described as follows: BEGINNING at a point on the Easterly right of way line of the existing highway which point is North 29 degrees 32 minutes West, 555.9 feet from the Southeast corner of said Quarter Section, the South line of said Quarter Section having an assumed bearing of North 89 degrees 26 minutes East; thence North 05 degrees 47 minutes East, 350.0 feet along said right of way line; thence North 23 degrees 23 minutes East, 99.2 feet along said right of way line; thence South 61 degrees 33 minutes East, 65.2 feet along said right of way line; thence South 17 degrees 54 minutes West to the place of beginning. The above contains 0.44 acre, more or less.

and

A tract of land in the Southeast Quarter of Section 12, Township 16 South, Range 4 East of the 6th P.M., described as follows: COMMENCING at the Southeast corner of said Quarter Section; thence on an assumed bearing of North 00 degrees 49 minutes 32 seconds West, 817.20 feet along the East line of said Quarter Section to the Easterly right of way line of the existing highway; thence North 62 degrees 14 minutes 05 seconds West, 202.86 feet along said Easterly right of way line to the POINT OF BEGINNING; FIRST COURSE, thence South 05 degrees 05 minutes 55 seconds West, 356.17 feet; SECOND COURSE, thence South 37 degrees 06 minutes 15 seconds West, 94.34 feet to said Easterly right of way line; THIRD COURSE, thence North 05 degrees 05 minutes 55 seconds East, 350.00 feet along said Easterly right of way line; FOURTH COURSE, thence North 22 degrees 42 minutes 26 seconds East, 99.17 feet along said Easterly right of way line; FIFTH COURSE, thence South 62 degrees 14 minutes 05 seconds East, 21.67 feet along said Easterly right of way line to the POINT OF BEGINNING. The above described tract contains 0.43 acre, more or less.



Uniform Program to Incentivize Commercial Cultivation Grant (UPTICC)

The City of Herington (City) hereby establishes the Uniform Program to Incentivize Commercial Cultivation (UPTICC) Grant Program to support business development in the City of Herington, KS. Funds for the program will be provided by the City for a 3-year program for 2024, 2025 and 2026. If successful, it will automatically renew for another 3-year period.

The purpose of the UPTICC program is to assist businesses through grants that will support improvements that help with the launch of a new business inside the City limits or help combat storefront blight. The City recognizes the value of the businesses located in Herington and the impact they have on the community. Grants under the UPTICC program will be provided to those projects that have the greatest value and preference will be given to currently operating or start-up businesses as well as projects that show personal financial investment from the applicant. Vacant and blighted buildings will be given priority for funding. City Staff have the authority to recommend or adjust project needs. Meaning, if there are code violations on the property, staff can recommend dollars be utilized to address these outstanding issues before other business needs.

Applicant Eligibility

1. Existing or new business (*buildings which are in violation of code or considered dangerous structures will be given preference. The City will be allowed to conduct a building inspection on said building before a grant award is considered*)
2. Property owner, lessor, or lessee of properties
3. Located within the City of Herington city limits
4. The business location must be primarily for business purposes only. Residential apartments or homes do not qualify
5. Business must be current on all taxes and City utility services. Business owners must also be current on City Utilities.
6. The business will only be eligible for a maximum of \$5,000 every 3-years. This can be broken into numerous grants. For example, if a business is only awarded \$2,500 one year, they would be eligible and prioritized for an additional \$2,500 the following year. If the full \$5,000 is awarded initially, a business is **NOT** eligible for another grant for a 3-year (36 month) window.
7. Previous grant winners from 2021-2023 can be eligible again, only after 3 years from the previous date of award. Only 2021 winners will be eligible in 2024, 2022 winners in 2025 and 2023 winners in 2026.
8. Other applicants will be awarded grants on a first-come, first serve basis. Meaning, applications will be awarded as they come. If all money has been awarded, no further grant applications will be accepted until the following year.

Approved January 2024

Use of Grant Funds

- 1) Facility/façade improvement
- 2) Renovation/remodel costs
- 3) Acquisition of machinery and/or equipment
- 4) Acquisition of inventory for business
- 5) Business start-up costs (requires pre-approval from City)

Prohibited use of Grant Funds

- 1) Purchase of real estate or land
- 2) Paying off or refinancing debt
- 3) Working or reserve capital
- 4) Salaries or payroll expenses
- 5) Payment of any taxes or utilities
- 6) Demolition

Application Requirements/Process

1. The application must be submitted to City at least 30 days before the start of the project
2. City staff will assist the applicant as needed
3. Applicant must provide evidence that all taxes are current
4. The applicant must provide details of the project and the use of funds, including a summary of total investment. Preference will be given to applications that show matching or concurrent funds being expended by the property owner or business.
5. Funded project must begin no more than 30 days from award of funds and must be completed within 90 days of the award unless prior extension approval is given by the City
6. Facility improvements must be made under the City's Code of Ordinances.
7. Applicant must agree to participate in media coverage and promotion of the program

Award Process

1. Applications will be reviewed, evaluated by, and approved the City Manager and City Clerk within 30 days of the application
2. All grants will be presented in front of the City Commission for follow-up
3. Award decisions are final and not eligible for appeal. However, awardees can adjust and reapply the next year.

Compliance

1. City staff will follow up with award recipient to ensure that funds are used for the defined purpose and that all program requirements are met
2. The recipient will provide all documentation required under the program, including receipts, invoices, and financial documentation
3. All facility improvement and signage projects require inspection/approval by City Staff including the City inspector
4. All proceeds from the UPTICC program must be used in the manner outlined on the application within the timeline specified
5. Business must remain in operation in the location specified in the application for a minimum of one (1) year from the date of the award
6. Any funds not spent as approved, in the time designated, will be repaid to the City within 30 days of ending project date

7. Any recipient who fails to meet these compliance requirements will be required to repay the grant amount in full to the City (approved applicants sign personal guarantees)

Funding

1. The City will provide \$20,000.00 per year for grants and operation of the UPTICC program. Commission may authorize additional grant funding during the year from the Special Projects budget if a formal vote is made to do so.
2. The minimum grant amount per recipient will be \$1,000.00
3. The maximum grant amount per recipient will be \$5,000.00
4. The total number of grants awarded per year will be determined based on the availability of funds budgeted for the program and the total number of eligible applications. The availability of grant funds is subject to change based on Commission directives.

The City of Herington's Uniform Program to Incentivize Commercial Cultivation (UPTICC) Grant is available to all eligible business applicants regardless of race, age, gender, religious or sexual orientation. Awards will be based on the value of the investment to the business and the City, the ability of the applicant to move forward with the proposed project promptly, the ability of the applicant to repay the funds to the City in the event of noncompliance, and the availability of funds.

DRAFT

City of Herington UPTICC Grant Application

Business name: _____
Address: _____ City: _____ State: _____ Zip: _____
Website: _____
Ownership: Private _____ Public _____
Business Structure (Proprietorship, Partnership, Corporation): _____
Year business was established: _____
Amount of grant funds requested: _____

1. Why are grant funds necessary for the project to succeed financially?
2. Describe the activity to be undertaken, the facility's use, and the product or service produced.
3. Classification of business
4. Schedule: Start Date _____ Completion Date _____
5. Does/will the applicant own or lease the project's property?
If leased, indicate the landlord/owner _____
If leased, indicate the lease term _____
6. Current workforce: Full-time _____ Part-time _____ Seasonal _____
7. Has the business previously received an incentive from the City of Herington?
8. Does the business meet all building qualifications and eligibility guidelines?
9. How much money/assets/time will be personally invested in the business or approved the project in addition to the grant amount awarded?
10. Is the business current on all taxes and city utilities?

Sign and Date _____

Approved or declined _____

Uniform Program to Incentivize Commercial Cultivation (UPTICC) Grant

PERSONAL GUARANTEE

The undersigned is an applicant with the Uniform program to Incentivize Commercial Cultivation (UPTICC) Grant with the City of Herington for a business located at _____, Herington, Kansas, and located within the City of Herington.

As an inducement for the City of Herington to accept the Applicant’s application for the UPTICC Grant, the undersigned hereby agrees to be personally responsible for re-payment of any grant monies awarded by the City of Herington to the Applicant should the Applicant fail to live up to the compliance terms established by the City of Herington’s UPTICC Grant.

A photographic or facsimile copy of this Personal Guarantee Form shall be as valid as the original.

EXECUTION SECTION

This guarantee is executed on this _____ day of _____, 20____.

Name: _____ Signature: _____

SS#: _____

Street Address: _____

City, State, Zip: _____

Phone: _____ Email: _____

NOTARY SECTION

State of _____ County of _____

This instrument was acknowledged before me on _____, by

_____.

Signature – Notary Public

(SEAL)

My Appointment Expires: _____