

(First Published in the \_\_\_\_\_  
on the \_\_\_\_ day of \_\_\_\_\_, 2016.)

THE CITY OF CHENEY, KANSAS

ORDINANCE NO. 893

AN ORDINANCE REVISING AND UPDATING THE FLOODPLAIN MANAGEMENT ZONING REGULATIONS WITHIN THE CORPORATE LIMITS OF THE CITY OF CHENEY, KANSAS BY AMENDING CHAPTER 20 OF THE CHENEY ZONING ORDINANCE, AND REPEALING ORDINANCE NUMBER 891.

WHEREAS, Pursuant to and in accordance with the authority granted by K.S.A. 12-741 et seq., including K.S.A. 12-766, the City of Cheney, Kansas currently regulates and manages floodplain zoning development through its floodplain zoning regulations found in Chapter 20 of the Cheney Zoning Ordinance; and

WHEREAS, in accordance with state and federal law, all such floodplain zoning regulations must be approved by the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program and must coordinate with the requirements and regulations of the National Flood Insurance Act of 1968 as amended; and

WHEREAS, the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program and the officials of the Federal Emergency Management Agency (FEMA) Region VII have recommended that the City of Cheney, Kansas revise its floodplain management zoning regulations by amending its existing regulations and adopting additional regulations based upon the recommended model floodplain management regulations; and

WHEREAS, the Cheney City Planning Commission held a public hearing on December 5, 2016 to consider these revisions to the City's floodplain management zoning regulations. Notice of this public hearing was published in the official city newspaper at least 20 days prior to the date of the public hearing in compliance with K.S.A. 12-757; and

WHEREAS, following the public hearing a majority of the members of the Cheney Planning Commission present and voting at the hearing voted to recommend approval of this amendment of Chapter 20 of the Cheney Zoning Regulations;

CITY OF CHENEY, KANSAS:

Section 1. Amending Section 20.02 of the Cheney Zoning Code

Section 20.02 of the Cheney Zoning Code is amended to read as follows:

**“20.02 Findings of Fact**

1. Flood Losses Resulting from Periodic Inundation

The special flood hazard areas of Cheney, 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.”

Section 2. Amending Section 20.03 of the Cheney Zoning Code

Section 20.03 of the Cheney Zoning Code is amended to read as follows:

**“20.03 Methods Used To Analyze Flood Hazards**

The current Flood Insurance Study (FIS) that is the basis of this Chapter 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 Chapter is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this Chapter. 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 December 22, 2016 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 floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.
- F. The current Flood Insurance Study and the FIRM adopted by the Governing Body and incorporated by reference in this Chapter.”

Section 3. Amending Section 20.04 of the Cheney Zoning Code

Section 20.04 of the Cheney Zoning Code is amended to read as follows:

**“20.04 General Provisions**

A. **LAND TO WHICH THIS CHAPTER APPLIES.** This Chapter shall apply to all lands within the jurisdiction of the City of Cheney identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated December 22, 2016 of the Flood Insurance Rate Map (FIRM) as amended and any future revisions thereto. In all areas covered by this Chapter, no development shall be permitted except upon a building or land use permit granted by the Floodplain Administrator.

B. **DESIGNATION OF FLOODPLAIN ADMINISTRATOR.** The City Administrator of the City of Cheney or his/her designee is hereby designated the Floodplain Administrator and appointed to administer and implement the provisions of this Chapter.

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 building or land use permits for compliance with the requirements of this Chapter, including verifying that sites are reasonably safe from flooding and that the floodplain development permit requirements of this Chapter have been satisfied;

2. Review of all applications for building or land use permits for proposed development for compliance with this Chapter and 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 in

compliance with this Chapter, including whether such proposals will be reasonably safe from flooding. The Floodplain Administrator shall review all building and land use permit applications to determine if the site of the proposed development meets the provisions of this Chapter and that all necessary permits have been received as required by federal or state law.

4. Issue building or land use 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;
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; and
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.

D. **RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.** The boundaries of the floodway and floodway fringe overlay districts shall be determined by reviewing the Flood Insurance Study, the FIRM, or other available data. Where interpretation is needed as to the exact location of the boundaries of the districts, the City Administrator shall make the necessary interpretation based upon data available. The City Administrator shall maintain the FIRM, Flood Insurance Study and other engineering studies relating to flood data. In such cases where the interpretation is contested, the Federal Emergency Management Agency (FEMA) will resolve the dispute. The owner of the property of which the regulatory flood elevation is in question shall be given a reasonable opportunity to present his/her case to the board and to submit his/her own technical evidence, if he/she so desires.

E. **COMPLIANCE.** No new structure or existing land shall hereafter be used and no new structure shall be located, extended, converted or structurally altered without full compliance with the terms of this Chapter and other applicable regulations.

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

G. INTERPRETATION. The provisions of this Chapter shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

H. WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this Chapter 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 height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Chapter 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 Chapter shall not create liability on the part of the City or any officer or employee thereof for any flood damages that may result from reliance on this Chapter or any administrative decision lawfully made thereunder.

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

#### Section 4. Amending Section 20.05 of the Cheney Zoning Code

Section 20.05 of the Cheney Zoning Code is amended to read as follows:

##### **“20.05 Building or Land Use Permit**

A. PERMIT REQUIRED. No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done within any numbered or unnumbered A zones, AE, AO, and AH zones without first obtaining a building or land use permit in accordance with the definition of development as contained herein. The building or land use permit shall be the same permit required for such development or substantial improvement under the Cheney City Code and other ordinances of the City of Cheney, Kansas, except that a building or land use permit shall be required for all development or substantial improvements within any numbered or unnumbered A zones, AE, AO, and AH zones regardless of whether a building or land use permit would otherwise be required under said Code or other ordinances of the City. No building or land use permit authorizing development or substantial improvements within any numbered or unnumbered A zones, AE, AO, and AH zones shall be issued unless the development or substantial improvement(s) authorized thereunder comply with the provisions of this Chapter.

B. APPLICATION FOR BUILDING OR LAND USE PERMIT. The Floodplain Administrator shall review all building and land use permit applications to verify that each site for proposed development is reasonably safe from flooding, the floodplain development permit requirements of this Chapter have been satisfied, the site of the proposed development meets the provisions of this Chapter and that all necessary permits have been received as required by federal or state law. To obtain a building or land use permit within any numbered or unnumbered A zones, AE, AO, and AH zones, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every application shall:

1. Identify and describe the work to be covered by the permit for which application is made;
2. Describe the land on which the proposed work is to be done by legal description and street address;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Be accompanied by plans and specifications for proposed construction;
5. Be signed by the permittee or his/her authorized agent who may be required to submit evidence to indicate such authority;
6. Specify whether the proposed development is located in designated flood fringe or floodway;
7. Identify the existing base flood elevation and the elevation of the proposed development accompanied by elevations of the lowest floor including basement or, in the case of flood proofed non-residential structures, the elevation to which it will be flood proofed. Documentation or certification of such elevations will be maintained by the City;
8. Give such additional information as may be required by the City such as:
  - a. A plan prepared by a registered engineer in the state of Kansas which includes typical valley cross sections and profiles showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be affected by the proposed development, and elevation of the fully developed one hundred (100) year flood.
  - b. Plan; surface view, showing elevations or contours of ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities, and other data that will assist the City Administrator to make a determination of flooding.”

Section 5. Amending Section 20.07 of the Cheney Zoning Code

Section 20.07 of the Cheney Zoning Code is amended to read as follows:

**“20.07 Standards for the Floodway Overlay District and the Floodway Fringe Overlay District**

A. COMPLIANCE REQUIRED. No permit shall be granted for new construction, substantial improvements and other improvements within any numbered or unnumbered A zones, AE, AO, and AH zones unless the conditions of this section are satisfied.

B. UNDESIGNATED AREAS. All areas identified as unnumbered “A” zones on the FIRM are subject to inundation of the one hundred (100) year flood; however, the base flood elevation is not provided. The unnumbered “A” zones shall be subject to all development provisions of this ordinance. If Flood Insurance Study data is not available the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources.

C. DESIGNATION OF FLOODWAY. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or 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.

D. STANDARDS. All new construction, subdivision proposals, substantial improvements, prefabricated structures, placement of manufactured homes, and other developments shall be designed or anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, and shall comply with the following:

1. New or replacement water supply systems and/or sanitary sewage systems shall be designed to eliminate or minimize infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems shall be located so as to avoid impairment of them or contamination from them beyond applicable environmental control limits during flooding.

2. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

3. All utility and sanitary facilities shall be flood proofed up to the regulatory flood-protection elevation so that any space below the regulatory food protection elevation is watertight, with walls substantially impermeable to the passage of water, with structural

components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

4. Any grading changes within the area estimated to be inundated by the one hundred (100) year flood, or alterations, modification or relocations of a watercourse within the jurisdiction of the Division of Water Resources, Kansas Department of Agriculture rules and regulations, as authorized by KSA 24-126, and any subsequent revisions thereof, shall insure that the water carrying capacity is maintained. The plans for such changes, modification, alterations or relocations shall be submitted to and approved by the Division of Water Resources, Kansas Department of Agriculture, concurrent with City approval. In addition, the City shall notify, in reverie situations, adjacent communities prior to the local office of the administrator of the Federal Insurance Administration (FIA).

5. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, are required to assure that (a) all such proposals are consistent with the need to minimize flood damage; (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage; (c) adequate drainage is provided so as to reduce exposure to flood hazards; and (d) 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 the regulatory flood elevation.

E. STORAGE, MATERIAL AND EQUIPMENT. The 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.”

Section 6. Amending Section 20.08 of the Cheney Zoning Code

Section 20.08 of the Cheney Zoning Code is amended to read as follows:

**“20.08 Floodway Overlay District**

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:

A. DISTRICT DEFINED. The Floodway Overlay District is comprised of all land within the regulatory floodway. It may be shown on a Flood Boundary and Floodway Map (FBFM) that is adopted as an official map of the City which shows both special flood hazard areas and the designated regulatory floodway.

B. PERMITTED USES. Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway Overlay District to the extent they are not prohibited by any other ordinance. All encroachments, including fill, new

construction, substantial improvements and other developments must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. The following are recommended uses for the Floodway Overlay District:

1. Agricultural uses such as general farming, pastures, nurseries, forestry.
2. Residential uses such as lawns, gardens and yard areas.
3. Non-residential uses such as loading areas, parking, and landing strips.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

C. **PROHIBITED USES.** All inhabitable structures, manufactured (mobile) homes, manufactured (mobile) home parks, manufactured (mobile) home subdivision, manufactured (mobile) home sales and display areas, and recreation vehicle storage or sales areas shall be prohibited.”

#### Section 7. Amending Section 20.09 of the Cheney Zoning Code

Section 20.09 of the Cheney Zoning Code is amended to read as follows:

##### **“20.09 Floodway Fringe Overlay District**

A. **DISTRICT DEFINED.** The Floodway Fringe Overlay District is comprised of all land within any numbered or unnumbered A zones, AE, AO, and AH zones on the current Flood Insurance Rate Map (FIRM) adopted by the City that is not located in the Floodway Overlay District.

B. **PERMITTED USES.** Any uses allowed in the Floodway Overlay District above as well as uses allowed in the underlying zoning district, in accordance with standards established in this section.

C. **PROHIBITED USES.** Manufactured (mobile) homes, manufactured (mobile) home parks, manufactured (mobile) home subdivision, manufactured (mobile) home sales and display areas, and recreation vehicle storage or sales areas shall be prohibited. Whenever any manufactured (mobile) home that currently exists within the Floodway Fringe Overlay District is substantially improved it must be elevated so that either:

1. The lowest floor of the manufactured (mobile) home is a minimum of one (1) foot above the base flood level; or

2. The manufactured (mobile) home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade 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.

D. STANDARDS FOR THE FLOODWAY FRINGE OVERLAY DISTRICT. The following additional requirements shall apply to development within the floodway fringe overlay district:

1. Residential Construction. New construction or substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above a point of one (1) foot above the one hundred (100) year base flood elevation. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

2. Non-Residential Construction. New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured 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 dry floodproofed to a minimum of one (1) foot above the base flood elevation. A registered professional engineer or architect shall certify 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

3. All new construction and substantial improvements that fully enclosed areas below the lowest floor area other than a basement that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A 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. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. Recreational Vehicles. Recreational vehicles placed on sites within the Floodway Fringe Overlay District must either:

- a. Be on the site for fewer than 180 consecutive days, or
- b. Be fully licensed and ready for highway use\*; or

- c. 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.

5. Additional Standards for 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:

a. *AO Zones*

- i. All new construction and substantial improvements of residential structures 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).

- ii. All new construction and substantial improvements of any commercial, industrial, or other non-residential structures 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 level 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.

- iii. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

b. *AH Zones*

- i. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Section 20.09 of this Chapter.

- ii. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

Section 8. Amending Section 20.12 of the Cheney Zoning Code

Section 20.12 of the Cheney Zoning Code is amended to read as follows:

**“20.12 Variances and Variance Procedures**

The City Board of Zoning Appeals shall hear and decide appeals and requests for variances from the requirements of this chapter.

A. Variance Criteria. In passing upon such applications for variances, the City Board of Zoning Appeals 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.

B. 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 the one-half acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the reconstruction, repair, rehabilitation, 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, provided 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 increase in flood discharge 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. The Floodplain Administrator shall notify the applicant in writing 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."

#### Section 9. Amending Section 20.13 of the Cheney Zoning Code

Section 20.13 of the Cheney Zoning Code is amended to read as follows:

##### **"20.13 Penalties for Violation**

Any violation of this Chapter shall be a violation of the Cheney Zoning Ordinance and the penalties therefore shall be as established in the General Provisions Chapter of the Cheney Zoning Ordinance."

#### Section 10. Amending Section 20.14 of the Cheney Zoning Code

Section 20.14 of the Cheney Zoning Code is amended to read as follows:

## **"20.14 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).

**"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"** means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

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

**"Base Flood Elevation (BFE)"** means the computed elevation to which floodwater is anticipated to rise during the base flood.

**"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 and if appropriate, corresponding water surface elevations.

**"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 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 Geodetic Vertical Datum (NGVD) of 1929 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).

**"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 FBFM 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, or a travel trailer, without wheels 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."*

**"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 floodplain riverine areas.

Section 11. Repeal  
Ordinance number 891 is hereby repealed.

Section 12. Effective Date

This Ordinance shall take effect and be in force from and after publication in the official city newspaper.

Passed by the City Council this 8<sup>th</sup> day of December, 2016.

Approved by the Mayor this 8<sup>th</sup> day of December 2016.



MAYOR, LINDA BALL



CITY CLERK, DANIELLE YOUNG

SEAL OF CHIEF ENGINEER APPROVING DRAFT: