

Article 22

FLOODWATER RETARDING DAM BREACH IMPACT DISTRICT (FRD)

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Section 22.01 **PURPOSE**

Certain areas of Harvey County below a Floodwater Retarding Dam (hereinafter referred to as FRD) would be subject to substantial flooding should a FRD breach occur. This could result in significant losses due to:

1. The cumulative effect of obstructions in the FRD breach impact area district causing increases in flood heights and velocities; and
2. The occupancy of the FRD breach impact area district by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damage.

The FRD breach impact area district is designed to permit the gainful use of certain lands which are considered to be in the path of potential flood waters and from which structures and other valuable property use that is subject to damage by flood water should be regulated. This would permit surface runoff through such areas in the event of a FRD breach with a minimum of structural damage or property loss, and a minimum of obligation upon governmental authorities for flood or disaster assistance.

As such, this Article is intended to promote the public health, safety, and general welfare, and minimize these losses by applying the provisions of this article to the designated areas within Harvey County. And by taking action to:

1. Restrict or prohibit uses which are dangerous to health, safety, or property in the FRD breach impact area, which might cause undue increase in flood heights; and
2. Protect individuals from buying lands for the purpose of building in the FRD breach impact area which is unsuited for intended purposes because of flood hazard.

Section 22.02 **FINDING OF FACT**

1. The FRD breach impact area district of Harvey County, Kansas are subject to inundation which, in the event of a FRD breach, could result in potential loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief, and impairment of the tax base; all of which adversely affect the public health, safety, and general welfare.

2. Such flood losses are caused by:
 - a. The cumulative effect of obstructions in FRD breach impact areas causing increases in flood heights and velocities.
 - b. The occupancy of FRD breach impact areas by uses vulnerable to floods or hazardous to others, and which are inadequately elevated or otherwise protected from flood damages.
3. This article uses a reasonable method of analyzing FRD breach impact flood hazards which consists of a series of interrelated steps, as follows:
 - a. The use of engineering calculations and breach impact studies which indicate the area and potential depth of inundation for each FRD.
 - b. Computation of floodway required to convey the breach flood waters with out increasing flood heights more than (1) one foot at any point.
 - c. Delineation of breach impact area encroachment lines within which no obstruction is permitted which could cause any increase in flood height.

Section 22.03

GENERAL PROVISIONS

1. Land to which Regulations Apply. This article shall apply to all lands within the unincorporated portion of Harvey County, Kansas, identified on the Floodwater Retarding Dam Maps as elaborated by the official Professional Engineering Breach Impact Studies. No development shall be permitted in any defined FRD Breach impact area except as authorized herein.
2. The Enforcement Officer. The Zoning Administrator of Harvey County, Kansas or his or her designee is designated as the enforcement officer.
3. Rules for Interpretation of District Boundaries. The boundaries of the FRD breach impact area district shall be determined by scaling distances on the engineering Breach Impact Studies. The Enforcement shall make all interpretations as to the exact location of said boundaries. In such cases where the interpretation is contested, the Board o Zoning Appeals will resolve the dispute.
4. Existing Development. No development or structures presently located within a known FRD breach impact area shall be required to be relocated, extended, converted, or structurally altered by the reason of the existence of the FRD breach impact area with the exception that a structure may be relocated to an approved site out of a FRD breach impact area.
 - a. Reconstruction of any such development or structure is allowed if destruction by 51% or more. All remodeling projects or additions to such development or structures are also allowed.
5. Abrogation and Greater Restrictions: It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provision of this

Article shall prevail. All other regulations inconsistent with this Article are hereby repealed to the extent of the inconsistency only.

6. Interpretation: In their interpretation and application, the provisions of this Article shall be held to be minimum requirements and shall be liberally construed in favor of the Governing body and Harvey County.
7. Warning and Disclaimer of Liability: The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. In the event of a FRD breach, larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes. This Article does not imply that areas outside boundaries of the FRD breach impact areas or land uses permitted within such districts will be free from flooding or flood damages. This Article shall not create liability on the part of Harvey County or any officer or employee thereof for any flood damages that may result from reliance on this Article or any administrative decision lawfully made thereunder.
8. Appeal: Where a request for a permit to develop, build, locate, extend, convert or structurally alter any structure or building is denied by the Enforcement Officer, the applicant may appeal such decision and apply for relief to the Board of Zoning Appeal in the method provided in these Regulations for appeals.

Section 22.04

ESTABLISHMENT OF ZONING DISTRICT

1. Establishment of Zoning District: The mapped FRD breach impact areas within the jurisdiction of this Article are hereby divided into the following district: a floodwater retarding dam breach impact overlay district "FRD" identified on the Floodwater Retarding Dam Maps and as elaborated by the official Professional Engineering Breach Impact Studies. Within this district all uses not meeting the standards of this Article and those standards of underlying zoning districts shall be prohibited.

Section 22.05

PERMITTED USES

- A. All residential construction would be allowed in the FRD below high hazard dams, to the extent they are not prohibited by any other regulation.
- B. All agricultural uses and private and public uses and non-inhabitable structures, such as agricultural buildings, homeowner accessory buildings, storage sheds and similar constructions would be allowed below any classification of dam, to the extent they are not prohibited by any other regulation.
- C. **SPECIAL VARIANCE CONSIDERATIONS FOR NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS.** New residential construction variance below low hazard and medium hazard dam would be allowed, as determined on a case by case basis. Allowance of such variance would include addressing subparagraphs 1 and 2 hereof any other relevant information.
 1. Certification by a licensed land surveyor or the results of a breach analysis, indicating that the proposed structure is above or out of the dam breach area;

2. Certification by a licensed land surveyor or the results of a breach analysis indicating that the proposed structure is one foot above the dam breach area;
3. Notice shall be given to the relevant watershed district of the hearing on the variance request.
4. In the event a variance is allowed then rebuilding and/or remodeling would be allowed.

Section 22.06

PERMITTING

1. Permit Required: No person, firm, or corporation shall initiate any development or cause the same to be done without first obtaining a permit or permits as required by these Regulations.