
City of Broken Bow

Wednesday, May 23, 2012

City Council Regular Session

Ordinance No. 2012-1116 Amending Ordance No. 634 Section 2.2

The Enforcement Officer from Building Inspector to Zoning Administrator as the designated enforcement officer.

Staff Contact: Tony Tolstedt

CITY OF BROKEN BOW
ORDINANCE No. 2012-1116

AN ORDINANCE DEALING WITH THE AMENDING OF SECTION 2.0 OF BROKEN BOW CITY ORDINANCE NO. 634, PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BROKEN BOW, CUSTER COUNTY, NEBRASKA:

Section 1.0 STATUTORY AUTHORIZATION; FINDINGS OF FACT AND PURPOSES

1.1 STATUTORY AUTHORIZATION.

The Legislature of the State of Nebraska has in the Nebraska State Statutes delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the health, safety and general welfare. Therefore, the Mayor and Council of the City of Broken Bow, Nebraska ordains as follows.

1.2 FINDINGS OF FACT

1.21 Flood Losses Resulting From Periodic Inundation.

The flood hazard areas of Broken Bow, Nebraska, 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.

1.22 General Causes of These Flood Losses.

These flood losses are caused by (1) the cumulative effect of obstruction in floodways causing increases in flood heights and velocities; (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damages.

1.23 Methods Used to Analyze Flood Hazards.

This ordinance uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

- (1) Selection of a regulatory flood which 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 regulatory flood selected for this ordinance is representative of large floods which are reasonable characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) change of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated September 29, 1978 as amended.
- (2) Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- (3) Computation of the floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.

(4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

(5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the regulatory flood.

1.3 STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize those losses described in Section 1.21 by applying the provisions of this ordinance to:

1.31 Restrict or prohibit uses which are dangerous to health, safety or property in times of flooding or cause undue increases in flood heights or velocities.

1.32 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

1.33 Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

1.34 Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

SECTION 2.0 GENERAL PROVISIONS

2.1 LANDS TO WHICH ORDINANCE APPLIES.

This ordinance shall apply to all lands within the jurisdiction of the Mayor and Council of the City of Broken Bow identified on the Flood Insurance Rate Map (FIRM) as numbered and unnumbered A Zones and within the Zoning Districts FW and FF established in Section 4.0 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon a permit to develop granted by the City Council or its duly designated representative under such safeguards and restriction as the Council or the designated representative may reasonable impose for the promotion and maintenance of the general welfare, health of the inhabitants of the city and where specifically noted in Sections 5.0, 6.0 and 7.0.

2.2 THE ENFORCEMENT OFFICER.

The Zoning Administrator of the City is hereby designated as the Council's duly designated Enforcement Officer under this ordinance.

2.3 RULES FOR INARMETATION OF DISTRICT BOUNDARIES

The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances on the official zoning map where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Zoning Appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his, own technical evidence.

2.4 COMPLIANCE

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

2.5 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 provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

2.6 INTERPRETATION

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

2.7 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 height 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 floodway and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Broken Bow or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

2.8 SEVERABILITY

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

2.9 APPEAL

Where a request for a permit to develop or a variance is denied by the Zoning Administrator the applicant may apply for such permit or variance directly to the Board of Zoning Appeals.

The Board of Zoning Appeals may grant or deny such request by appropriate resolution adopted within sixty (60) days after the date of such application to the Board of Zoning Appeals.

SECTION 3.0 DEVELOPMENT PERMIT

3.1 PERMIT REQUIRED

No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development for each such building or structure.

3.2 ADMINISTRATION

A. The Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.

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

- (1) Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied.
- (2) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required,
- (3) Notify adjacent communities and the Natural Resource District prior to any alteration or relocation of a watercourse, and shall

submit evidence of such notification to the Federal Insurance Administration.

- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
- (6) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structure has been floodproofed.
- (7) When floodproofing is utilized for a particular structure the Zoning Administrator shall be presented a certification from a registered professional engineer or architect.

3.3 APPLICATION FOR PERMIT

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

- 3.31 Identify and describe the work to be covered by the permit.
- 3.32 Describe the land on which the proposed work is to be done by lot, block tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
- 3.33 Indicate the use or occupancy for which the proposed work is intended.
- 3.34 Be accompanied by plans and specifications for proposed construction.
- 3.35 Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
- 3.36 Give such other information as reasonably may be required by the Zoning Administrator.

SECTION 4.0 ESTABLISHMENT OF ZONING DISTRICTS

The mapped flood plain areas within the jurisdiction of this ordinance are hereby divided into the two following districts: a floodway overlay district (FW) and a floodway fringe overlay district (FF) identified in the Flood Insurance Study (Flood Boundary and Floodway Map. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered A Zones as identified on the Official FIRM and identified in the Flood Insurance Study provided by the Federal Insurance Administration.

SECTION 5.0 STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT

- 5.1 No Permit for development shall be granted for new construction, substantial improvements and other improvements including the placement of mobile homes within all numbered and unnumbered A zones unless the conditions of this Section are satisfied.
- 5.2 All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the water surface elevation was 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 data currently available within its area of jurisdiction.

5.3 New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of mobile homes and other developments shall require:

- 5.31 Design or anchorage to prevent flotation, collapse or lateral movement due to flooding.
- 5.32 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.
- 5.33 New development and substantial improvements to: a) use construction materials and utility equipment that are resistant to flood damage, and b) use construction methods and practices that will minimize flood damage, consistent with economic practicability.
- 5.34 All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation.
- 5.35 That until a floodway has been designated, no development, including landfill, may be permitted within Zones A1-30 on the city's FIRM unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one (1) foot on the average cross section of the reach in which the development or landfill is located as shown on the Flood Insurance Rate Study incorporated by reference; Section 1.23 (1) of this ordinance.

5.36 Storage and Material and Equipment

- (1) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
 - (2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
- 5.37 Subdivision proposals and other proposed new development be 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 of five (5) acres or fifty (50) lots whichever is lesser, include within such proposals the regulatory flood elevation.

SECTION 6.0 FLOODWAY FRINGE OVERLAY DISTRICT

6.1 PERMITTED USES

Any use permitted in Section 7.0 shall be permitted in the Floodway Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.0 are met.

6.2 STANDARDS FOR THE FLOODWAY FRINGE OVERLAY DISTRICT

- 6.21 Require new construction or substantial improvements of residential structures to have the lowest floor, including basement elevated one (1) foot above the regulatory flood elevation.
- 6.22 Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated one (1) foot above the regulatory flood elevation or, together with attendant utility and sanitary facilities, to be flood-proofed up to that level.

- 6.23 Within Zones AO all new construction and substantial improvements of residential structures have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the official FIRM.

Non-residential structures, within Zones AO, together with attendant utility and sanitary facilities may be floodproofed to or above the depth number specified on the official FIRM.

- 6.24 For new mobile home parks, mobile home subdivisions or expansions the same, and for new mobile homes not in a mobile home park and for existing mobile home parks where the repair, reconstruction or improvement of streets, utilities and pads equals or exceeds 50 per cent of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, it is required that:

a) Specific anchoring standards be met:

1. Over-the-top ties be provided at each of the four corners of the mobile home with two additional ties per side at the intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side.
2. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side.
3. All components of the anchoring system be capable of carrying a force of 4800 pounds.
4. Any additions to mobile homes be similarly anchored.

b) Stands or lots are elevated on compacted fill or piers so that the lowest floor of the structure will be one (1) foot above the regulatory flood elevation.

c) Adequate surface drainage and easy access for a hauler is provided.

d) In the instance of elevation on piers, lots are large enough to permit steps, pier foundations are placed on stable soil no more than 10 feet apart and steel reinforcement is provided for piers more than 6 feet high.

SECTION 7.0 FLOODWAY OVERLAY DISTRICT

7.1 PERMITTED USES

Only uses haying* low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. No use shall increase the flood levels of the regulatory flood elevation. These uses are subject to the standards of Section 5.0 and 6.0.

7.11 Agricultural uses such as general farming, pasture, nurseries, forestry.

7.12 Residential uses such as lawns, gardens, parking and play areas.

7.13 Non-residential areas such as loading areas, parking, airport landing strips.

7.14 Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves. Placement of mobile homes is prohibited in the floodway, except in existing mobile home parks and existing mobile home subdivisions.

SECTION 8.0 VARIANCE

8.1 Where by reason of exceptional narrowness, shallowness, shape of topography, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any provision of this ordinance would result in peculiar and exceptional hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, the Board of Zoning Appeals may authorize a variance from strict application so as to relieve the demonstrable difficulties or hardships, provided that such a variance may only be granted if:

8.11 The structure is to be erected on a lot of one half acre or less in size and such lot is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood protection elevation.

8.12 The structure is listed on the National Register of Historic Places or the State Inventory of Historic Places to be restored or reconstructed.

8.2 Variances shall not be issued except upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the variance issuance 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 or state laws or ordinances.

8.3 Variances may only be issued upon a determination that the applicant requesting a variance shall meet the minimum necessary standards of this ordinance to afford relief.

8.4 A community will notify the applicant that the issuance of a variance to locate a structure at an elevation below the 100-year flood level will result in increased actuarial rates for flood insurance coverage. The Applicant will provide written and notarized acknowledgment of such notification,

SECTION 9.0 NON-CONFORMING USE

9.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance but which is not in conformity ~~with~~ following conditions:

9.11 No such use or substantial improvement of that use shall be expanded, changes, enlarged, or altered in a way which increases its non-conformity,

9.12 If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the Zoning Administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.

9.13 Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

9.2 If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 per cent Of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

SECTION 10.0 PENALTIES FOR VIOLATION

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 grants of variances or special exceptions) 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 One Hundred Dollars (\$100.00), and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offence.

Nothing herein contained shall prevent the City of Broken Bow or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 11.0 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 in interest and citizens shall have an opportunity to be heard. At least 15 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Broken Bow.

The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in the Federal Register, Volume 41, Number 207, dated October 26, 1976,

SECTION 12.0 DEFINITIONS

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

ACTUARIAL RATES or "risk premium rates" are those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U.S.C. 4014 and the accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.

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CHANNEL A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus is, that water which is flowing within the limits of a defined channel,

DEVELOPMENT Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

FLOOD - A temporary rise in streams flow or stage that results in water overlapping its banks and inundating areas adjacent to the channel. An unusual and rapid accumulation of runoff or surface waters from any source.

FLOOD ELEVATION DETERMINATIONS - A determination of the water surface elevations of the 100-year flood; that is, the level of flooding that has a one per cent chance of occurrence in any given year.

FLOOD INSURANCE RATE MAP (FIRM) - An official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

FLOOD INSURANCE STUDY (FIS)	The official report provided by the Federal Insurance Administration; ^{ie} report contains flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.
FLOOD PLAIN MANAGEMENT	The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plan, flood control works and flood plain management regulations.
FLOOD PROTECTION SYSTEM	-Those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard". Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound federal engineering standards.
FLOOD PROOFING	-Any combination of structural and non-structural additions, changes or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
FLOODWAY	-The channel of a river or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.
FLOODWAY FRINGE	-That area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).
HABITABLE FLOOR	-Any floor used for living, which includes working, sleeping, eating, cooking or recreation or combination thereof. A floor used only for storage purposes is not a "Habitable Floor".
MOBILE HOME. Ai - ' is built	-A. structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities., It does not include recreational Vehicles or travel trailers,
MOBILE HOME PARK	-"Mobile Home Subdivision" means a parcel (or contiguous (SUBDIVISION) parcels) of land which has been divided into two or more lots for rent or sale and the placement of mobile homes.
NEW CONSTRUCTION	-New construction means those structures where new construction or substantial improvement of which is begun after December 31, 1974, or the effective date of the FIRM, whichever is later.
OVERLAY DISTRICT	-A district which acts in conjunction with the underlying zoning district or districts,
REGULATORY' FLOOD ELEVATION	-Elevation indicated on the FIRM as the elevation of the 100-year flood,
REGULATORY FLOOD PROTECTION ELEVATION	.An elevation one foot higher than the water surface elevation of the regulatory flood,
STRUCTURE	- A walled and roofed structure including a gas or liquid storage tank, that is principally above the ground, including but without limitation to buildings, factories, sheds, cabins, mobile homes, and other similar uses.

SUBSTANTIAL IMPROVEMENT - "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 per cent of the market value of the structure either, (a) before the improvement is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations.

100-YEAR FLOOD – The base flood having a one percent chance of annual occurrence.

Section 13. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 14. This ordinance shall be in full force and effect from and after its approval and publication according to law.

Passed and approved this 23rd day of May, 2012.

Mayor, Cecil Burt

ATTEST:

City Clerk, Elaine L. Bayer