

City of Scottsbluff, Nebraska

Monday, October 3, 2022

Regular Meeting

Item Resolut.3

Council to consider action on the first reading of the Ordinance to approve the proposed Ordinance Text Changes to Chapter 25 Article 19, Article 12, Article 15 and Article 3 regarding the Floodplain Overlay Zone.

Staff Contact: Zachary Glaubius, Planning Administrator

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SCOTTSBLUFF, NEBRASKA, AMENDING CHAPTER 25, ARTICLE 19, SECTIONS 1 THROUGH 26 DEALING WITH FLOODPLAIN OVERLAY ZONE, REVISING CHAPTER 25-12-11, 25-12-12 AND 25-12-14, TO REFER TO THE FLOODPLAIN OVERLAY ZONE, AMENDING CHAPTER 25-12-13 TO CONFORM WITH THE NEW PROVISIONS OF THE FLOODPLAIN OVERLAY ZONE, AMENDING CHAPTER 25-15-27 TO REFER TO THE FLOODPLAIN OVERLAY ZONE AND ITS AMENDMENTS, AND REPEALING CHAPTER 25-3-22 REFERRING TO A FLOODPLAIN ZONING DISTRICT, PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA:

Section 1. Sections 25-19-1 through 25-19-26 are now revised and amended to read as follows:

“Article 19: FLOODPLAIN OVERLAY ZONE

§25-19-1 DEFINITIONS.

Unless specifically defined below, words or phrases used in Chapter 25, Article 19 shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application. Where a term is defined in the following sections shall be the meaning of that term wherever it appears in this Article.

0.2% Annual Chance Floodplain means the floodplain that would be inundated by the 0.2% annual chance flood and delineated on the Flood Insurance Rate Maps.

0.2% Annual Chance Flood Elevation means the elevation to which floodwaters are expected to rise during a 0.2% annual chance flood.

Appurtenant Structure shall mean a structure on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure. Also shall be known as “accessory structure.”

Appeal means a request for a review of the Floodplain Administrator’s interpretation of any provision of this Article or a request for a variance.

Area of Shallow Flooding means a designated AO or AH zone on the City’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood means the flood having one (1) percent chance of being equaled or exceeded in any given year.

Base Flood Elevation means the elevation to which floodwaters are expected to rise during the base flood.

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

Building means “structure.” See definition for “structure.”

Development means any change to real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion or alteration of buildings or other structures; the placement of manufactured homes; streets and other paving; utilities; filling, grading, and excavation; mining; dredging; drilling operations; storage of equipment or materials; or obstructions.

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 complete before the effective date of June 15, 1979.

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 or tidal waters or (2) The usual and rapid accumulation of runoff of surface waters from any source.

Flood Fringe is that area of the floodplain, outside of the floodway, that has a one (1) percent chance of flood occurrence in any one year.

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

Flood Insurance Study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of "flooding"). Floodplain includes flood fringe and floodway. Floodplain and special flood hazard area are the same for use by this Article.

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, and 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.

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 wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

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 or modified so as to render the structure in violation of the applicable non-elevation design requirements of this Article.

Manufactured Home means a structure, transportable in one or more sections, which 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.

New Construction 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 regulation 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 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 on or after the effective date of floodplain management regulations adopted by a community.

Obstruction means any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation (including the alteration or relocation of a watercourse or drainway), channel rectification, bridge, conduit, culvert, building, stored equipment or material, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property. Dams designed to store or divert water are not obstructions if permission for the construction thereof is obtained from the Department of Natural Resources pursuant to the Safety of Dams and Reservoirs Act (*Nebraska Revised Statutes* 46-1601 to 46-1670 as amended).

Overlay District is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

Post-FIRM Structure means a building that was constructed or substantially improved after December 31, 1974 or on or after the City's initial Flood Insurance Rate Map dated June 15, 1979, whichever is later.

Pre-FIRM Structure means a building that was constructed or substantially improved on or before December 31, 1974 or before the City's initial Flood Insurance Rate Map dated June 15, 1979, whichever is later.

Principally Above Ground means that at least fifty (51) percent of the actual cash value of the structure is above ground.

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

Regulatory Flood Elevation means the base flood elevation (BFE) plus a freeboard factor as specified in this Article.

Special Flood Hazard Area (SFHA) is the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

Start of Construction means the date the floodplain development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. "Start of construction" also includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or 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; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not 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 the alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground, as well as a manufactured home and a gas or liquid storage tank that is principally above ground.

Subdivision means the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels, or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership, or building or lot development

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage 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 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 which 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 is a grant of relief to an applicant from the requirements of this Article that allows construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Violation means a 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 in this Article is presumed to be in violation until such time as that documentation is provided.

Watercourse means any depression two feet or more below the surrounding land that serves to give direction to a current of water at least nine months of the year and that has a bed and well-defined banks.

25-19-2 STATUTORY AUTHORIZATION.

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety, general welfare, and property of the people of the state. The Legislature, in *Nebraska Revised Statutes* Sections 31-1001 to 31-1023 (as amended), has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city, or village with zoning jurisdiction over the flood prone area. Therefore, the City Council of the City of Scottsbluff, Nebraska ordains as follows:

25-19-3 FINDINGS OF FACT.

(A) Flood Losses Resulting from Periodic Inundation

The flood hazard areas of the City of Scottsbluff, Nebraska, are subject to inundation that 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.

(B) General Causes of the Flood Losses

These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities as well as the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others that are inadequately elevated or otherwise unprotected from flood damages.

25-19-4 STATEMENT OF PURPOSE.

It is the purpose of this Article to promote the public health, safety, and general welfare and to minimize those losses described in 25-19-3 by applying the provisions of this Article to:

- A. 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.
- B. Require that uses vulnerable to floods, including public facilities that service such uses, be provided with flood protection at the time of initial construction.

- C. Reduce financial burdens from flood damage borne by the City, its governmental units, its residents, and its businesses by preventing excessive and unsafe development in areas subject to flooding.
- D. Assure that eligibility is maintained for property owners in the City to purchase flood insurance from the National Flood Insurance Program.

25-19-5 ADHERENCE TO REGULATIONS.

The regulations of this Article are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the Nebraska Minimum Standards for Floodplain Management Programs as published in the Nebraska Administrative Code Title 455, Chapter 1.

25-19-6 LANDS TO WHICH ARTICLE APPLIES.

This Article shall apply to all lands within the jurisdictions of the City of Scottsbluff identified on the Flood Insurance Rate Map (FIRM) shown on the Index 310206IND0 dated 06/15/1979 as Zones A, A1-30, AE, AO, or AH and within the Zoning Districts FW and FF established in 25.19.13. In all areas covered by this Article, no development shall be allowed except upon the issuance of a floodplain development permit to develop, granted by the floodplain administrator or the designated representative under such safeguards and restrictions as the floodplain administrator or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the City and where specifically noted in 25-19-14 through 25-19-25.

25-19-7 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.

The boundaries of the floodway and the flood fringe overlay districts shall be determined by scaling distances on the official zoning map or on the effective Flood Insurance Rate Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the zoning or other City map, the floodplain administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment 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 their case to the Board of Adjustment and to submit their own technical evidence, if so desired.

25-19-8 COMPLIANCE.

Within identified floodplains of the City, no development shall be located, extended, converted, or structurally altered without full compliance with the terms of this Article and other applicable regulations.

25-19-9 ABROGATION AND GREATER RESTRICTIONS.

This Article does not intend 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 articles inconsistent with this Article are hereby repealed to the extent of the inconsistency only.

25-19-10 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 shall not be deemed a limitation or repeal of any other powers granted by state statutes.

25-19-11 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. Larger floods may occur or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This Article does not imply that areas outside floodway and flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This Article shall not create liability on the part of the City of Scottsbluff 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.

25-19-12 SEVERABILITY.

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

25-19-13 ESTABLISHMENT OF ZONING DISTRICTS.

Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: a floodway overlay district (FW) and a flood fringe overlay district (FF) as identified in the Flood Insurance Study dated December 1978 and on accompanying FIRM panels as established in 25-19-6.

The flood fringe overlay district shall correspond to flood zones A, AE, A1-30, AH, AO, AR, A99, and floodway areas in Zone AE that are identified on FIRM panels. The floodway overlay district shall correspond to the floodway areas in Zone AE that are identified on the FIRM panels. Within these districts, all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited.

25-19-14 FLOODPLAIN MANAGEMENT ADMINISTRATION.

(A) DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Floodplain Manager or designated representative of the City is hereby designated as the City's local floodplain administrator. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of this Article. If the local floodplain administrator position is unfilled, the Director of Development Services shall assume or assign the duties and responsibilities herein.

(B) DUTIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the floodplain administrator shall include, but not be limited to the following:

- (1) Review, approve, or deny all applications for floodplain development permits.
- (2) Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this Article have been satisfied.
- (3) Review applications for proposed development to assure that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required.
- (4) 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.
- (5) Notify adjacent communities and the Nebraska Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
- (6) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.
- (7) Verify, record, and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures in the floodplain overlay zone.
- (8) Verify, record, and maintain record of the actual elevation (in relation to mean sea level) to which all new or substantially improved structures have been floodproofed.
- (9) Verify, record, and maintain record of all improved or damaged structures to ensure compliance with standards in applicable sections. Track value of improvements and market value with permits. Also, ensure consistent market value estimations to evaluate against damaged or improved values.
- (10) Ensure a comprehensive development plan as amended is consistent with this Article.
- (11) In the event the floodplain administrator discovers work done that does not comply with applicable laws or articles, the floodplain administrator may revoke the permit and work to correct any possible violation in accordance with this Article.

25-19-15 PERMITS REQUIRED.

A floodplain development permit shall be required before any development, construction, or substantial improvement is undertaken. No person, firm, corporation, government agency, or other entity shall initiate any floodplain development without first obtaining a floodplain development permit.

25-19-16 APPLICATION FOR PERMIT AND DEMONSTRATION OF COMPLIANCE.

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

- (1) Identify and describe the proposed development and estimated cost to be covered by the floodplain development permit.
- (2) Describe the land on which the proposed development is to be done by lot, block, tract, and house and streets address, or similar description that will readily identify and definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.

- (4) Be accompanied by plans and specifications for proposed construction.
- (5) Be signed by the permittee and authorized agent who may be required to submit evidence to indicate such authority.

(B) If any proposed development is located entirely or partially within a floodplain, applicants shall provide all information in sufficient detail and clarity to enable the floodplain administrator to determine that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;
- (3) Structures will be anchored to prevent flotation, collapse, or lateral movement;
- (4) Construction materials are flood resistant;
- (5) Appropriate practices to minimize flood damage have been utilized; and
- (6) Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent entry of floodwaters.

(C) For all new and substantially improved structures, an elevation certificate based upon the finished construction certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator and be completed by a licensed surveyor, engineer, or architect.

(D) When floodproofing is utilized for an applicable structure, a floodproofing certificate shall be provided to the floodplain administrator and be completed by a licensed professional engineer or architect.

(E) For all development proposed in the floodway, no-rise certification shall be provided to the floodplain administrator and be completed by a licensed professional engineer.

(F) Any other such information as reasonably may be required by the floodplain administrator shall be provided.

(G) Letters of Map Revision: Federal regulations in Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.5 and 65.6 allow for changes to the special flood hazard area through a Letter of Map Revision (LOMR) or a Letter of Map Revision Based on Fill (LOMR-F), provided the community determines that the land and any existing or proposed structures that would be removed from the floodplain are “reasonably safe from flooding.” The City acknowledgement form asserting this is required for LOMR and LOMR-F applications and must be signed by the floodplain administrator. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:

(1) Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F.

(2) Applicant shall demonstrate that the property and any existing or proposed structures will be “reasonably safe from flooding,” according to the minimum design standards in FEMA Technical Bulletin 10-01.

(3) All requirements listed in the Simplified Approach in FEMA Technical Bulletin 10-01 shall be met and documentation from a registered professional engineer shall be provided. If all of these requirements are not met, applicant must provide documentation in line with the Engineered Approach outlined in FEMA Technical Bulletin 10-01.

25-19-17 FLOOD DATA REQUIRED.

(A) All Zone A areas on the FIRM are subject to inundation of the base flood; however, the base flood elevations are not provided. Zone A areas shall be subject to all development provisions of this Article. If Flood Insurance Study data is not available, the City shall utilize any base flood elevation or floodway data currently available from federal, state, or other sources, including from a study commissioned by the applicant pursuant to best technical practices.

(B) Until a floodway has been designated, no development or substantial improvement may be permitted within the floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown in the Flood Insurance Study or on base flood elevation determinations.

25-19-18 VARIANCES AND APPEALS.

Variance and Appeals Procedures

- (A) The Board of Adjustment as established by the City of Scottsbluff shall hear and decide appeals and requests for variances from the requirements of this Article.
- (B) The Board of Adjustment 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 Article.
- (C) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in *Nebraska Revised Statutes* Section 19-912.
- (D) In evaluating such appeals and requests, the Board of Adjustment shall consider technical evaluation, all relevant factors, standards specified in other sections of this Article, and:
 - (1) The danger to life and property due to flooding or erosion damage;
 - (2) The danger that materials may be swept onto other lands to the injury of others;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner, future owners, and neighboring properties;
 - (4) The importance of the services provided by the proposed facility to the City;
 - (5) The necessity of the facility to have a waterfront location, where applicable;
 - (6) The availability of alternative locations that are not subject to flooding or erosion damage for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and the floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
 - (11) The costs of providing government services during and after flood conditions including emergency management services and maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets, and bridges.

(E) Conditions for Variances

- (1) Variances shall only be issued upon a showing of good and sufficient cause and also upon a determination that failure to grant the variance would result in an exceptional hardship to the applicant.
- (2) Variances shall only be issued based upon a determination that the granting of a variance will not result in increased flood heights.
- (3) Variances shall only be issued based upon a determination that the granting of a variance will not result in 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 articles.
- (4) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 5-9 below have been fully considered and requirements of state statute section 19-912-R.R.S. 1943 are met. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (5) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure on the National Register of Historic

Places and the variance is the minimum necessary to preserve the historic character and design of the structure.

(6) Variances shall not be issued within any designated floodway if any increase in water surface elevations along the floodway profile during the base flood discharge would result.

(7) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(8) The applicant shall be given a written notice over the signature of a City representative that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance and also that such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Article.

(9) All requests for variances and associated actions and documents, including justification for their issuance, shall be maintained by the City.

25-19-19 ENFORCEMENT.

A. Violations

Failure to obtain a floodplain development permit or the failure of a structure or other development to be fully compliant with the provisions of this Article shall constitute a violation. A structure or other development without a floodplain development permit, elevation certificate, certification by a licensed professional engineer of compliance with these regulations, or other evidence of compliance is presumed to be in violation until such time as documentation is provided.

B. Notices

When the floodplain administrator or other authorized City representative determines, based on reasonable grounds, that there has been a violation of the provisions of this Article, the floodplain administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:

- (1) Be in writing;
- (2) Include an explanation of the alleged violation;
- (3) Allow a reasonable time for the performance of any remedial act required;
- (4) Be served upon the property owner or their agent as the case may require; and
- (5) Contain an outline of remedial actions that, if taken, will bring the development into compliance with the provisions of this Article.

C. Penalties

(1) Violation of the provisions of this Article 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 Class II Violation as stated in Article 6; 6-7-1 of the Scottsbluff Municipal Code. Any person, firm, corporate, or other entity that violates this Article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$250.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(2) The imposition of such fines or penalties for any violation or non-compliance with this Article shall not excuse the violation or non-compliance or allow it to continue. All such violations or non-compliant actions shall be remedied within an established and reasonable time.

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

25-19-20 ALTERATION OR RELOCATION OF A WATERCOURSE.

(A) A watercourse or drainway shall not be altered or relocated in any way that in the event of a base flood or more frequent flood will alter the flood carrying characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations.

(B) No alteration or relocation shall be made until all adjacent communities that may be affected by such action and the Nebraska Department of Natural Resources have been notified and all applicable permits obtained. Evidence of such notification shall be submitted to the Federal Emergency Management Agency.

25-19-21 ENCROACHMENTS.

(A) When proposing to permit any of the following encroachments, the standards in 25-19-22(B) shall apply:

- (1) Any development that will cause a rise in the base flood elevations within the floodway; or
- (2) Any development in Zones A, A1-30, and Zone AE without a designated floodway that will cause a rise of more than one foot in the base flood elevation; or
- (3) Alteration or relocation of a stream; then

(B) The applicant shall:

(1) Apply to FEMA for conditional approval of such action via the Conditional Letter of Map Revision process (as per Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.12) prior to the permit for the encroachments; and

(2) Supply the fully approved package to the floodplain administrator including any required notifications to potentially affected property owners.

25-19-22 FLOODWAY OVERLAY DISTRICT.

(A) Within any floodway, any new construction or substantial improvements shall be prohibited.

(B) Standards for the Floodway Overlay District

- (1) New structures for human habitation are prohibited.
- (2) All encroachments, including fill, new construction, substantial improvements, and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during the occurrence of the base flood discharge. These developments are also subject to all the standards of 25-19-20 through 25-19-24.
- (3) In Zone A areas, obtain, review, and reasonably utilize any flood elevation and floodway data available through federal, state, or other sources, including studies done under 25-19-24 (H) "Subdivisions", in meeting the standards of this section.

(C) Only uses having a low flood-damage potential and not obstructing flood flows shall be allowed within the Floodway Overlay District to the extent that they are not prohibited by any other article. The following are recommended uses for the Floodway Overlay District:

- (1) Agricultural uses such as general farming, pasture, nurseries, and forestry
- (2) Residential uses such as lawns, gardens, parking, and play areas
- (3) Nonresidential uses such as loading areas, parking, and airport landing strips
- (4) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, and wildlife and nature preserves.

25-19-23 ELEVATION AND FLOODPROOFING REQUIREMENTS.

(A) Residential Structures

(1) In Zones A, AE, A1-30, and AH, all new construction and substantial improvements shall have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation. Mechanical equipment including those associated with utilities, such as but not limited to electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall also be elevated to or above one (1) foot above base flood elevation.

(2) In Zone AO, all new construction and substantial improvements shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the FIRM or, if no depth number is specified on the FIRM, at least as high as three (3) feet. Mechanical equipment including those associated with utilities, such as but not limited to electrical, heating, ventilation, plumbing,

and air conditioning equipment and other service facilities, shall also be elevated to or above the one (1) foot above base flood elevation.

(3) In the floodway, new structures for human habitation are prohibited.

(B) Nonresidential Structures

(1) In Zones A, AE, A1-30, and AH, all new construction and substantial improvements shall have the lowest floor, including basement, mechanical equipment including those associated with utilities, such as but not limited to electrical, heating, ventilation, plumbing, and air condition equipment and other service facilities shall be elevated to or above one (1) foot above the base flood elevation.

A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.

(2) Zone AO areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In Zone AO all new construction and substantial improvements shall have the lowest floor, and mechanical equipment including those associated with utilities, such as but not limited to electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the FIRM or, if no depth number is specified on the FIRM, at least as high as three (3) feet; or, together with attendant utility and sanitary facilities, floodproofed so that below one (1) foot above the base flood elevation:

(a) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.

(C) Space Below Lowest Floor

(1) Fully enclosed areas below the lowest floor (excluding basements) and below the base flood elevation shall be used solely for the parking of vehicles, building access, or limited storage of readily removable items.

(2) Fully enclosed areas below the lowest floor (excluding basements) and below the base flood elevation 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) A minimum of two openings having a net total area of not less than one (1) square inch for every one (1) square foot of enclosed space,

(b) The bottom of all openings shall not be higher than one (1) foot above grade, and

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.

(D) Appurtenant Structures

Structures accessory to a principal building may have the lowest floor below one foot above base flood elevation provided that the structure complies with the following requirements:

(1) The structure shall not be used for human habitation.

(2) The use of the structure must be limited to parking of vehicles or storage of items readily removable in the event of a flood warning.

(3) The floor area shall not exceed 864 square feet in R1, R1A, R4, and R6 zones.

(4) The structure shall have a low damage potential.

(5) The structure must be adequately anchored to prevent flotation, collapse, or other lateral movement.

(6) The structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. 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) A minimum of two openings having a net area of not less than one (1) square inch for every one (1) square foot of enclosed space,

(b) The bottom of all openings shall not be higher than one (1) foot above grade, and

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.

(7) No utilities shall be installed except electrical fixtures in the structure, which must be elevated or floodproofed to one (1) foot above base flood elevation.

(8) The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

(9) If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

E. Manufactured Homes

(1) Require that all manufactured homes to be placed or substantially improved within the floodplain overlay district be elevated on a permanent foundation such that the lowest floor of the manufactured home utilities, mechanicals, and equipment, is one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of this Article if the site meets the following criteria:

(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 home as incurred substantial damage as the result of a flood,

(2) New manufactured home parks of five (5) acres or fifty (50) lots, whichever is less, shall follow the standards of 25-19-24 (H) "Subdivisions".

(3) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(a) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

(b) Frame ties be provided at each corner of the manufactured home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;

(c) Any additions to the manufactured home be similarly anchored.

(F) Existing Structures

(1) The provisions of this Article do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to a structure in the floodplain, a floodplain development permit is required and the following provisions shall apply.

(2) Any addition, alteration, reconstruction, or improvement of any kind to an existing structure where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall constitute a substantial improvement and shall fully comply with the provisions of this Article.

(3) Any addition, alteration, reconstruction, or improvement of any kind to an existing structure in the floodway shall comply with the provisions of 25-19-22.

(4) Any addition, alteration, reconstruction, or improvement of any kind to an existing structure that will change the compliance requirements of the building shall require applicable documentation including an elevation certificate, floodproofing certificate, or no rise certification

25-19-24 DESIGN AND CONSTRUCTION STANDARDS.

(A) Anchoring. All buildings or structures shall be firmly anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(B) Building Materials and Utilities

- (1) All buildings or structures shall be constructed with materials and utility equipment resistant to flood damage. All buildings or structures shall also be constructed by methods and practices that minimize flood and flood-related damages.
- (2) All buildings or structures shall be constructed with electrical, heating, ventilation, plumbing, 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.

(C) Drainage. Within Zones AO and AH, adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

(D) Water Supply and Sanitary Sewer Systems

- (1) All new or replacement water supply and sanitary sewer systems shall be located, designed, and constructed to minimize or eliminate flood damages to such systems and the infiltration of floodwaters into the systems.
- (2) All new or replacement sanitary sewage systems shall be designed to minimize or eliminate discharge from the system into floodwaters.
- (3) On-site waste disposal systems shall be located and designed to avoid impairment to them or contamination from them during flooding.

(E) Other Utilities. All other utilities such as gas, electrical, and other utilities shall be located and constructed to minimize or eliminate flood damage to such utilities and facilities.

(F) Storage of Materials

- (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) The 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.

(G) Recreational Vehicles

Recreational vehicles to be placed on sites within the floodplain shall:

- (a) Be on site for fewer than 180 consecutive days;
- (b) Be fully licensed and ready for highway use, which shall mean it is on its wheels or jacking system, is attached to the site by only quick-disconnect type utilities and security devices, and no permanently attached additions; or
- (c) Meet the permit requirements and the elevation and anchoring requirements for manufactured homes of this article.

(H) Subdivisions

Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall require assurance 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, elevated, and constructed to minimize or eliminate flood damage;
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
- (4) Proposals for development (including proposals for manufactured home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, where base flood elevation data are not available, shall be supported by hydrologic and hydraulic analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letters of Map Revision and a Letters of Map Revision.

25-19-25 NONCONFORMING USE.

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

- (1) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Article. The Utility providers shall notify the floodplain administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.
- (2) Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

(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 50% of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this Article. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, or safety code or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

25-19-26 AMENDMENTS.

The regulations, restrictions, and boundaries of Article 19 may be amended, supplemented, changed or appealed as defined by 25-15-1 through 25-15-10 and 25-15-27.”

Section 2. Section 25-12-11 is now revised and amended to read as follows:

“25-12-11 RESIDENCE, BUILDINGS; EXCEPTIONS.

Anything in any other provision of this Article to the contrary notwithstanding, the restrictions in §25-15-6, 25-15-7 and 25-15-10 of this Chapter shall not apply to a residence use if there is no increase in the number of dwelling units in such residence building unless such use is in a Floodplain Overlay Zone or a Floodplain District.”

Section 3. Section 25-12-12 is now revised and amended to read as follows:

“25-12-12 MANUFACTURED HOMES; EXCEPTION.

Manufactured homes shall comply with the provisions of this Article pertaining to buildings; provided, a manufactured home can be replaced at any time by a more recent model home; provided, further, if the manufactured home is in a Floodplain Overlay Zone or Floodplain District, it shall comply with all of the provisions of Article 19 of this Chapter, as amended, applicable to manufactured homes.”

Section 4. Section 25-12-14 is now revised and amended to read as follows:

“25-12-14 SAME; STRUCTURE; ENLARGEMENT; ALTERATION.

No structure in a Floodplain Overlay Zone which, although lawful immediately prior to the enactment of Article 19 of this Chapter, is not in conformity with all provisions of such Article 19 of this Chapter as amended, may be enlarged or otherwise altered except in conformity with the requirements of such Article as amended; provided, the ground floor of any structure in existence on June 26, 1978, may be enlarged:

- (A) If the enlargement does not exceed 25% or 250 square feet, whichever is greater; and
- (B) If, in addition, the value of the structure after the enlargement does not exceed 150% of the value of the structure before the enlargement.”

Section 5. Section 25-12-13 is now revised and amended as follows:

“25-12-13 FLOODPLAIN OVERLAY ZONE; USES.

Anything in any other provision of this Article to the contrary notwithstanding, a use of any structure or other use of premises in a Floodplain Overlay Zone which existed and was lawful immediately prior to the enactment of Article 19 of this Chapter, and which still existed on November 12, 1979, may be continued even if it was not, and is not, in conformity with all provisions of such Article or amendments thereof; provided, no such use, if discontinued for a period of 1 year, may be re-established. Any use which does not conform to the provisions of Article 19 of this Chapter or any amendment thereof may not be changed to another non-conforming use.”

Section 6. Section 25-15-27 is now revised amended to read as follows:

“25-15-17 FLOODPLAIN OVERLAY ZONE; AMENDMENTS.

- A. The regulations, restrictions, and boundaries set forth in this Article may from time to time be amended, supplemented, changed, or repealed to reflect any and all changes in Federal, State, or Local regulations provided, however, that no such action may be taken until after a public hearing in relation thereto, at which citizens and parties in interest 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 Scottsbluff. At least ten (10) days shall elapse between the date of this publication and the public hearing.
- B. A copy of such Amendment will be provided to the Nebraska Department of Natural Resources and the Federal Emergency Management Agency for review and approval before being adopted.”

Section 7. Section 25-3-22 Floodplain Zoning Jurisdiction is now repealed.

Section 8. Prior Sections 25-19-1 through 25-19-29, 25-12-11, 25-12-12, 25-12-14, 25-12-13 and 25-15-27 are now amended and included in the Scottsbluff Municipal Code, Section 25-3-22 is now repealed, and all other Ordinances and parts of Ordinances in conflict herewith are repealed. Provided, however, this Ordinance shall not be construed to affect any rights, liabilities, duties or causes of action either criminal or civil, existing or actions pending at the time when this Ordinance becomes effective.

Section 9. This Ordinance shall become effective upon its passage, approval as provided by law, and publication shall be in pamphlet form.

PASSED and APPROVED on _____ , 2022.

Mayor

Attest:

City Clerk (Seal)

Approved as to Form:

City Attorney