

TITLE XV: LAND USAGE

Chapter

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CHAPTER 150: BUILDING CODE; UNSAFE BUILDINGS

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BUILDING CODE

§ 150.01 ADOPTION OF BUILDING CODE.

(A) It is hereby adopted for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, use and occupancy, location and maintenance of buildings and structures, the International Building Code (IBC), 2000 edition, published by the International Code Council and the International Residential Code (IRC), 2000 edition, published by the International Code Council.

(B) Any amendments to these codes shall automatically be adopted by the city.

(C) These codes shall become effective on January 1, 2004.

(D) Until that time, the Uniform Building Code and the CABO One- and Two-family Building Code, and the BOCA Code shall remain in effect.

(E) One copy of the code and any amendments thereto shall be on file at all times in the office of the Clerk and shall be made part of this code as if set out at length herein.
(Prior Code, § 4-1-1) (Ord. 662, passed 9-17-2003)

§ 150.02 JURISDICTION OF BUILDING CODES.

All building codes adopted by the city, including the International Building Code, International Residential Code and Property Maintenance Code, shall apply to properties within the zoning and subdivision jurisdiction of the city. This jurisdiction consists of property one mile outside the corporate limits of the City of Bayard as defined by the official zoning map (Ord. 783, passed 2-16-2016)

UNSAFE BUILDINGS**§ 150.15 PROHIBITION.**

It shall be unlawful to maintain or permit the existence of any unsafe building in the city as defined in the building codes referenced in § 150.01, and it shall be unlawful for the owner, occupant or person in custody of any unsafe building to permit the same to remain in an unsafe condition, or to occupy the building or permit it to be occupied while it is in an unsafe condition. (Prior Code, § 4-2-1) (Ord. 575, passed 5-13-1997) Penalty, see § 10.99

§ 150.16 DETERMINATION AND NOTICE.

(A) Whenever the Building Inspector, Fire Chief, Police Chief, Mayor or City Administrator determines that any building or structure within the city is an unsafe building as defined by the building codes referenced in § 150.01, he or she shall adopt a statement to that effect and direct the City Clerk to cause the property to be posted accordingly and to file a copy of the statement in the office of the County Clerk and ex-officio Register of Deeds of the county, and to serve written notice upon the owner of the property and upon the occupant of the property, if any, either by personal service or by certified mail. The notice shall state that the building has been declared to be an unsafe building, shall set forth the conditions which make the building unsafe, and shall state that those conditions must be removed or remedied by repairing, rehabilitating, demolishing or removing the building within 60 days from the date of receipt of the notice.

(B) If the person or persons receiving the notice have not complied with the notice or taken an appeal from the determination that the building is unsafe within ten days from the time that the notice is served, the Building Inspector shall proceed to remedy the condition or demolish the unsafe building. (Prior Code, § 4-2-2) (Ord. 575, passed 5-13-1997)

§ 150.17 HEARING AND APPEAL.

Upon receiving the notice to repair, rehabilitate, demolish or remove the building, the owner of the building, within the time stipulated, may in writing to the City Clerk request a hearing before the City Council sitting as the Board of Appeals as provided for in the building codes referenced in § 150.01, to present reasons why the building should not be repaired, rehabilitated, demolished or removed. The City Council shall hold the hearing not later than the next regular meeting of the City Council. A written notice of the City Council's decision following the hearing shall be sent to the property owner and the occupant by certified mail. If the City Council rejects the appeal, the owner shall have ten days from the sending of the notice of the decision to begin repair, rehabilitation, demolition or removal, and shall complete the same within 60 days thereafter. If after the ten-day period the owner has not begun work, the City Council shall proceed to cause the work to be done. (Prior Code, § 4-2-3) (Ord. 575, passed 5-13-1997)

§ 150.18 EMERGENCY.

Where any unsafe building as defined by the building codes referenced in § 150.01, poses an immediate danger to the health, safety or general welfare of any person or persons and the owner fails to remedy the condition in a reasonable time after notice as provided for in § 150.17 above, the city may summarily repair or demolish and remove the building.
(Prior Code, § 4-2-4) (Ord. 575, passed 5-13-1997)

§ 150.19 SPECIAL ASSESSMENTS.

(A) If the owner of any building or structure fails to comply with notice by the Building Inspector, Fire Chief, Police Chief, Mayor or City Administrator to repair, rehabilitate, demolish or remove an unsafe building or structure, the city may proceed with the work specified in the notice to the property owner.

(B) The Building Inspector shall submit a statement of the cost of the work to the City Council which may then by resolution:

(1) Levy the cost as a special assessment against the real estate upon which the building or structure is located. The special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or

(2) Collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.
(Prior Code, § 4-2-5) (Ord. 575, passed 5-13-1997)

CHAPTER 151: FLOODPLAIN REGULATIONS

Section

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§ 151.01 AUTHORIZATION; FINDINGS.

(A) *Statutory authorization.* The legislature of the state has in Neb. RS 31-1001 to 31-1022 assigned the responsibility to local governmental units to adopt floodplain management regulations designed to protect the public health, safety and general welfare. Therefore, the City Council ordains as follows.

(B) *Findings of fact.*

(1) *Flood losses resulting from periodic inundation.* The flood hazard areas of the city are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(2) *General causes of the flood losses.* These flood losses are caused by:

(a) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities; and

(b) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

(C) *Statement of purpose.* It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize the losses described in the findings of fact by applying the provisions of this chapter to:

(1) Restrict or prohibit uses which are dangerous to health, safety or property in time of flooding or cause undue increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including public facilities which serve those uses, be provided with flood protection at the time of initial construction;

(3) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard; and

(4) Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.
(Prior Code, § 4-5-0) (Ord. 568, passed 1-14-1997)

§ 151.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BASE FLOOD. A flood having a 1% chance of being equaled or exceeded in any given year.

BASEMENT. Any area of the building having its floor subgrade (below ground level) on all sides.

DEVELOPMENT. Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION OF EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. 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. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP. An official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOODPLAIN. Any land area susceptible to being inundated by water from any source.

FLOODPROOFING. Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY. The channel of the 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 a designated height.

HISTORIC STRUCTURE. Any structure that is:

- (1) 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;
- (2) 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;
- (3) Individually listed on a state inventory of historic places in states with the historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR. 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 the

enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME. 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 connected to the required utilities. For floodplain management purposes the term **MANUFACTURED HOME** does not include a “recreational vehicle”. For insurance purposes the term **MANUFACTURED HOME** does not include park trailers, travel trailers and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION. For the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial official map or after December 31, 1974, whichever is later, and includes any subsequent improvements to the structures. For floodplain management purposes, **NEW CONSTRUCTION** means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to those structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. 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.

100-YEAR FLOOD. The condition of flooding having a 1% chance of annual occurrence.

PRINCIPALLY ABOVEGROUND. That at least 51% of the actual cash value of the structure, less land value, is aboveground.

RECREATIONAL VEHICLE. A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOOD ELEVATION. The water surface elevation of the 100-year flood.

SPECIAL FLOOD HAZARD AREA. The land within a community, subject to a 1% or greater chance of flooding in any given year. This land is identified as Zone A on the official map.

START OF CONSTRUCTION.

(1) For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-248), being 16 U.S.C. 3501 *et seq.*, 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.

(2) The actual ***START*** means either 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.

(3) 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.

(4) For a substantial improvement, the actual ***START OF CONSTRUCTION*** means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE. A walled and roofed building that is principally aboveground, as well as a manufactured home, and a gas or liquid storage tank that is principally aboveground.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT.

(1) Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement.

(2) This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

(3) The term does not, however, include either:

(a) 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 administrator and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a “historic structure”; provided, that the alteration will not preclude the structure’s continued designation as a “historic structure”.

VARIANCE. A grant of relief by a community from the terms of a floodplain management regulation.

VIOLATION. The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations.
(Prior Code, § 4-5-1) (Ord. 527, passed 10-11-1994)

§ 151.03 DUTIES OF CLERK.

(A) The City Clerk hereby has the added responsibilities set out and is authorized and directed to enforce all of the provisions of this chapter and all other ordinances of the city now in force or hereafter adopted, related to Zoning, Subdivision or Building Codes. See § 152.01 and Title V of this code.

(B) The City Clerk shall be appointed to these additional responsibilities by resolution of the governing body and his or her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the City Clerk, the governing body of the city shall designate an acting Administrator.
(Prior Code, § 4-5-2) (Ord. 527, passed 10-11-1994)

§ 151.04 FLOOD INSURANCE RATE MAP.

The City Council hereby declares the current “Flood Insurance Rate Map for the City of Bayard” dated September 3, 1997, and amendments thereto, as the official map to be used in determining those areas of special flood hazard.
(Prior Code, § 4-5-3) (Ord. 580, passed 7-8-1997)

§ 151.05 PERMITS REQUIRED.

No person shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for “development” as defined in this chapter.

(A) *Separate permits required.* Within special flood hazard areas on the official map, separate floodplain development permits are required for all new construction, substantial improvements and other developments including the placement of manufactured homes.

(B) *Application.*

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

(2) Every application shall:

(a) Identify and describe the development to be covered by the floodplain development permit for which application is made;

(b) Describe the land on which the proposed development 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 development;

(c) Indicate the use or occupancy for which the proposed development is intended;

(d) Be accompanied by plans and specifications for proposed construction;

(e) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate the authority;

(f) Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of floodproofed nonresidential structures, the elevation to which it shall be floodproofed. Documentation or certification of those elevations will be maintained by the City Clerk; and

(g) Give other information as reasonably may be required by the City Clerk (i.e., require a statement from the applicant that they are aware that elevating or floodproofing structures above the minimum levels will result in premium reduction, especially in the case of nonresidential floodproofing when a minus one foot penalty is assessed at the time of rating the structure for the policy premium). (Prior Code, § 4-5-4) (Ord. 527, passed 10-11-1994) Penalty, see § 10.99

§ 151.06 REVIEW OF APPLICATIONS.

(A) The City Clerk shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by federal or state law.

(B) The City Clerk, in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in § 151.02 above) will:

(1) *Performance standards.* Obtain, review and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from federal, state or other sources, until other data is provided by the Federal Insurance Administration in a flood insurance study; and require within special flood hazard areas on the official map that the following performance standards be met:

(a) *Increase of water surface elevation.* Until a floodway has been designated, no development or substantial improvement may be permitted within the identified floodplain, unless the

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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 100-year flood more than one foot at any location;

(b) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation;

(c) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below such a level the structure is watertight with wall substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this division are satisfied. The certification shall be provided to the local administrator; and

(d) *Parking or storage.* Required for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

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

(2) *Construction materials.* Require the use of construction materials that are resistant to flood damage;

(3) *Construction methods and practices.* Require the use of construction methods and practices that will minimize flood damage;

(4) *Anchoring.* Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(5) *Equipment location.* New structures be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(6) *Manufactured home tie downs.* Assure that all manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Manufactured homes must be anchored in accordance with state laws, local building codes and FEMA guidelines. In the event that over-the-top frame 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 the 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 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) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(d) Any additions to manufactured homes be similarly anchored.

(7) *Manufactured home placement.* Assure that all manufactured homes that are placed or substantially improved within special flood hazard areas on the community's official map on sites:

(a) Outside of a manufactured home park or subdivision;

(b) In a new manufactured home park or subdivision;

(c) In an expansion to an existing manufactured home park or subdivision; or

(d) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of division (B)(6) above.

(8) *Manufactured home elevation.* Assure that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's official map that are not subject to the provisions of division (B)(7) above be elevated so that either:

(a) The lowest floor of the manufactured home is at least one foot above the base flood elevation; or

(b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of division (B)(6) above.

(9) Recreational vehicles.

(a) Require that recreational vehicles placed on sites within the identified special flood hazard areas on the community's official map either:

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

(b) A recreational vehicle is ready for highway use if it is on its wheels or jacking system is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Prior Code, § 4-5-5) (Ord. 527, passed 10-11-1994)

§ 151.07 SUBDIVISION APPLICATIONS.

The governing body of the city shall review all subdivision applications and other proposed new developments, including manufactured home parks or subdivisions, and shall make findings of fact and assure that:

(A) All the proposed developments are consistent with the need to minimize flood damage;

(B) Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions), greater than five acres or 50 lots, whichever is lesser, include within the proposals regulatory flood elevation data in special flood hazard areas;

(C) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(D) All public utilities and facilities are located so as to minimize or eliminate flood damage.

(Prior Code, § 4-5-6) (Ord. 527, passed 10-11-1994)

§ 151.08 NEW WATER AND SEWER AND THE LIKE.

New and replacement water and sewer systems shall be constructed to eliminate or minimize infiltration by, or discharge into flood waters. Moreover, on-site waste disposal systems will be designed to avoid impairment or contamination during flooding.

(Prior Code, § 4-5-7) (Ord. 527, passed 10-11-1994)

§ 151.09 ALTERATION OF WATERCOURSE.

(A) *Flood-carrying capacity within any watercourse.* The governing body of the city will ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. The city will notify, in riverine situations, adjacent communities and the State Natural Resources Commission prior to any alteration or relocation of a watercourse, and submit copies of thenotifications to the Federal Emergency Management Agency. Moreover, the city will work with appropriate state and federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Flood Disaster Protection Act of 1973.

(B) *Storage of material and equipment.* 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. 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.

(Prior Code, § 4-5-8) (Ord. 568, passed 1-14-1997)

§ 151.10 VARIANCE PROCEDURES.

(A) *Appeals generally.*

(1) The Board of Adjustment as established by the city shall hear and decide appeals and requests for variances from the requirements of this chapter.

(2) Where a request for a permit to develop or a variance is denied by the City Clerk, the applicant may apply for the permit or variance directly to the Board of Adjustment.

(B) *Appeals due to error.* 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 City Clerk in the enforcement or administration of this chapter.

(C) *District Court.* Any person aggrieved by the decision of the Board of Adjustment or any taxpayer or any officer, department, board or bureau of the city may appeal the decision to the District Court as provided in Neb. RS 19-912.

(D) *Consideration of application.* In passing upon the applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this chapter and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;

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- (3) The susceptibility of proposed facility and its contents to flood damage and the effect of the damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, 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 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 flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) *Conditions for variances.*

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing divisions (E)(2) through (E)(5) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued 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 granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(5) The applicant shall be given a written notice over the signature of the City Clerk that:

(a) The issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

(b) The construction below the base flood level will increase risk to life and property. The notification shall be maintained with a record of all variance actions as required by this chapter. (Prior Code, § 4-5-9) (Ord. 527, passed 10-11-1994; Ord. 568, passed 1-14-1997)

Cross-reference:

Zoning, see Chapter 152 of this code of ordinances

§ 151.11 NONCONFORMING USE.

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

(1) If the use is discontinued for 90 days, any future use of the building premises shall conform to this chapter. The Utility Department shall notify the City Clerk in writing of instances of nonconforming uses where utility services have been discontinued for a period of 90 days; and

(2) Uses or adjuncts thereof which 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 chapter. 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. (Prior Code, § 4-5-10) (Ord. 527, passed 10-11-1994)

§ 151.12 EFFECT AND AMENDMENT OF CHAPTER.

This chapter shall take precedence over conflicting ordinances or parts of ordinances. The governing body of the city may, from time to time, amend this chapter to reflect any and all changes in the National Flood Disaster Protection Act of 1973. The regulations of this chapter are in compliance with the National Flood Insurance Program Regulations as published in C.F.R. Title 44, and the 1983 Nebraska Floodplain Management Act.

(Prior Code, § 4-5-12) (Ord. 527, passed 10-11-1994)

§ 151.13 ABROGATION AND GREATER RESTRICTIONS.

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

(Prior Code, § 4-5-13) (Ord. 568, passed 1-14-1997)

§ 151.14 INTERPRETATION.

In their interpretation and application, the provisions of this chapter 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.

(Prior Code, § 4-5-14) (Ord. 568, passed 1-14-1997)

§ 151.15 WARNING AND DISCLAIMER OF LIABILITY.

(A) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study.

(B) Larger floods may occur on rare occasions or the flood height may be increased by human-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside floodplain district boundaries or land uses permitted within the districts will be free from flooding or flood damage.

(C) This chapter shall not create liability on the part of the city or any officer or employee thereof for any flood damages that may result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Prior Code, § 4-5-15) (Ord. 568, passed 1-14-1997)

CHAPTER 152: ZONING CODE

Section

152.01 Adoption of Zoning Code

§ 152.01 ADOPTION OF ZONING CODE.

The city zoning regulations, as amended, are hereby adopted by reference, and incorporated herein as fully as if set out at length herein. These regulations establish zoning districts, and official zoning map, and rules and regulations for land use within the various districts. These regulations shall be published in book and pamphlet form, with copies available at the City Clerk's office.

(Prior Code, § 11-1-1) (Ord. 669, passed 5-11-2004)

