

**ORDINANCE #820**

***Floodplain Management Code of 2025***

***Pursuant to 44 CFR 60.3(d),  
Neb. Rev. Statutes Chapter 31 Article 10, and  
Neb. Admin. Code Title 455 Ch. 1***

*AN ORDINANCE INTRODUCED BY THE CITY OF YUTAN IDENTIFYING FLOODPLAIN, FLOODWAY, AND FLOOD FRINGE AREAS DEFINING THE SAME AND SETTING FORTH REGULATIONS THEREOF.*

BE IT ORDAINED BY THE MAYOR OF YUTAN, NEBRASKA AS FOLLOWS:

- 1) That the Planning Commission held a public hearing on March 10, 2026, to review this ordinance, consider public comment, and make findings on the proposed regulations, ultimately voting to recommend approval of the regulations;
- 2) That the City Council of Yutan, Nebraska, held a public hearing on March 17, 2026, to consider the Planning Commission's recommendation, all public comment, and then review the proposed code and hereby fully adopts the authorization, findings, and statements made in Section 1.0 (below) as fully as if set out at length herein;
- 3) That Section 10-401 of Municipal Code be amended to state:

To promote the public health, safety, and general welfare and to minimize loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary expenditures for flood protection and relief, and impairment of the tax base, a floodplain management code was adopted by Ordinance #820 on March 17, 2026. One copy of the adopted code shall be kept on file and available for inspection at the City Offices. (Am. Ord. 820, 3-17-2026)

- 4) That record of this ordinance's passage shall be kept by the City of Yutan;
- 5) That should any sentence, paragraph, or word of this ordinance be declared for any reason to be invalid, it is the intent of the Mayor and City Council of Yutan, Nebraska, that it would have passed all other portions of this ordinance;
- 6) That all ordinances or parts of ordinances related to floodplain management passed and approved prior to the passage, approval, and publication of this ordinance and in conflict herewith, are hereby repealed;
- 7) That this ordinance shall be published within the first fifteen days after its passage and approval, in pamphlet form, and shall be in full force and take effect on that date; and
- 8) That the City of Yutan shall adopt as floodplain management regulations the "Floodplain Management Code of 2025," as follows:

**SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSE**

**1.1 STATUTORY AUTHORIZATION**

WHEREAS, the Nebraska Legislature delegated the responsibility to local governmental units to adopt regulations designed to protect the public health, safety, general welfare, and property of the people of the state. In Neb. Rev. Stat. §§ 31-1001 to 31-1023, the Nebraska Legislature further delegated the responsibility to such local governments to adopt, administer, and enforce floodplain management regulations which meet or exceed the standards adopted by the Nebraska Department of Water, Energy, and Environment (DWEE).

THEREFORE, the City Council of Yutan, Nebraska, ordains as follows:

## **1.2 FINDINGS OF FACT**

### **1.21 Flood Losses Resulting from Periodic Inundation**

The flood hazard areas of Yutan, 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. (Neb. Rev. Stat. §31-1001)

### **1.22 General Causes of 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. (Neb. Rev. Stat. §§ 31-1001, 31-1015)

## **1.3 STATEMENT OF PURPOSE**

It is the purpose of this code to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.2 by applying the provisions of this ordinance/regulation to:

- 1.31 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;
- 1.32 Require that uses vulnerable to floods, including public facilities that service such uses, be provided with flood protection at the time of initial construction;
- 1.33 Reduce financial burdens from flood damage borne by the community, its governmental units, its residents, and its businesses by preventing excessive and unsafe development in areas subject to flooding;
- 1.34 Assure that eligibility is maintained for property owners in the community to purchase flood insurance from the National Flood Insurance Program (NFIP). (Neb. Rev. Stat. §§ 31-1001, 31-1019)

## **1.4 ADHERENCE TO REGULATIONS AND LAWS**

The regulations of this ordinance are in compliance with the NFIP regulations as published in Title 44 of the Code of Federal Regulations (CFR), the Nebraska Minimum Standards for Floodplain Management Programs as published in the Nebraska Administrative Code Title 455, Chapter 1, and the floodplain management statutes (Neb. Rev. Stat. §§ 31-1001 to 31-1023). Prior to the community's adoption of these regulations, this ordinance must have been reviewed by the DWEE Floodplain Management Division for compliance with NFIP and State minimum standards. (Neb. Rev. Stat. §31-1019)

## **SECTION 2.0 GENERAL PROVISIONS**

### **2.1 COMPLIANCE**

Within identified special flood hazard areas of this community, no development shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations. (44 CFR 60.3(b))

### **2.2 ABROGATION AND GREATER RESTRICTIONS**

This ordinance does not intend to repeal, abrogate, or impair any existent easement, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only. (44 CFR 60.1(b))

### **2.3 INTERPRETATION**

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

### **2.4 WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and flood fringe boundaries or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of Yutan or any officer or employee thereof for any flood damages that may result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

### **2.5 SEVERABILITY**

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

## **SECTION 3.0 REGULATED FLOOD HAZARD AREAS**

### **3.1 LANDS TO WHICH ORDINANCE APPLIES**

This ordinance shall apply to all lands within the City of Yutan's jurisdiction, including its Extra-Territorial Jurisdiction (ETJ) as shown on the City's Official Zoning Map, identified on Flood Insurance Rate Map (FIRM) panels #31155C0400D, #31155C0250D, #31155C0275D, and #31155C0425D all dated 4/5/2010 as Zones A, A1-30, AE, AO, or AH and within the Flood Fringe and Floodway established in Section 3.2 of this ordinance. In all areas covered by this ordinance, no development shall be allowed except upon the issuance of a floodplain development permit to develop, granted by the floodplain administrator as identified in Section 4.1 of this ordinance, or the governing body under such safeguards and restrictions as the governing body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and where specifically noted in Sections 5.0 and 6.0. (44 CFR 59.2(c)) (44 CFR 60.3(b))

### **3.2 ESTABLISHMENT OF FLOOD HAZARD AREA BOUNDARIES**

Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following areas: a floodway and a flood fringe, as identified in the Flood Insurance Study (FIS) #31155CV000B dated 8/3/2016 and on accompanying FIRM panels as established in Section 3.1. The flood fringe shall correspond to flood zones A, AE, A1-30, AH, AO, AR, A99, and floodway areas in Zone AE that are identified on the FIRM panels. The floodway shall correspond to floodway areas in Zone AE that are identified on the FIRM panels. Within the floodplain, all uses not meeting the standards of this ordinance and those standards of the floodplain, flood fringe, and floodway shall be prohibited. (44 CFR 59.2(c))

### **3.3 ESTABLISHMENT OF THE FLOODWAY**

Located within special flood hazard areas established in Section 3.2 are areas designated as floodways. The floodway must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation. The floodway boundary, where identified within the special flood hazard area, is as illustrated on the referenced maps and studies. Only uses having a low flood-damage potential and not obstructing flood flows shall be allowed within the floodway to the extent that they are not prohibited by Section 5.0 of this ordinance or by any other ordinance adopted by the community.

### **3.4 FLOOD DATA REQUIRED**

- 3.41 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 ordinance. If FIS data is not available, the community 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. (44 CFR 60.3(b)(4))
- 3.42 In Zone A areas where base flood elevations are not provided, the DWEE Floodplain Management Division may determine base flood elevations and provide such data to the floodplain administrator upon request for applicable projects. Such base flood elevation data may not be used for the design of developments greater than 5 acres or 50 lots or for the design of hydraulic structures. (Neb. Rev. Stat. §31-1017(4)(6)) (44 CFR 60.3(b)(3) and (b)(4))
- 3.43 In Zone AE areas where base flood elevations have been established, the community shall utilize the FIS referenced in Section 3.2 of this ordinance for purposes of determining the elevation of the base flood. (44 CFR 60.3(c) and (d))

### **3.5 INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES**

The boundaries of the floodplain, including the floodway and flood fringe, shall be determined by scaling distances on the official zoning map or on the FIRM. Where interpretation of the exact location of floodplain boundaries as shown on the zoning or other community map is needed, the floodplain administrator shall make the necessary interpretation. In such cases where interpretation is contested, the Floodplain Appeals Board, established in Section 9.11 of this code, will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the floodplain boundary on the land. The person contesting the location of the boundary shall be given reasonable opportunity to present their case to the Floodplain Appeals Board and to submit their own technical evidence, if so desired. (Neb. Rev. Stat. §14-401, §14-408, and §23-168.02)

### 3.6 ALTERATION OF A REGULATED FLOOD HAZARD AREA

#### 3.61 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 capacity characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations. (Neb. Admin. Code, Title 455, Ch. 1, §004.14) (44 CFR 60.3(b)(6) and (7))
- B. The community responsible for the alteration or relocation of a watercourse or drainway or for approving any such alteration or relocation shall notify the DWEE and adjacent communities prior to commencing or approving such activity. (Neb. Admin. Code, Title 455, Ch. 1, §004.14) (44 CFR 60.3(b)(6))

#### 3.62 Encroachments

- A. Any floodplain development permit application proposing any of the following encroachments shall not be approved by the floodplain administrator unless the standards of Section 3.62(B) and 3.62(C) are met:
  - i. Any development in Zones A, A1-30, and Zone AE without a designated floodway that will cause a rise of more than one (1) foot in the base flood elevation [44 CFR 60.3(c)(13)]; or
  - ii. Any development that will cause a rise in the base flood elevations within the floodway [44 CFR 60.3(d)(3)]; or
  - iii. Alteration or relocation of a stream; then
- B. The applicant shall apply to FEMA for conditional approval of such action via the Conditional Letter of Map Revision (CLOMR) process (as per Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.12) prior to the permit for the encroachments. When applying to FEMA for a conditional approval, the following information must be included:
  - i. Certification that no structures are located in areas which would be impacted by the increased base flood elevation; (44 CFR 65.12(a)(5))
  - ii. Documentation of individual legal notice to all impacted property owners within and outside of the community, explaining the impact of the proposed action on their property. (44 CFR 65.12(a)(3))
  - iii. An evaluation of alternatives that would not result in an unacceptable base flood elevation increase that demonstrates why such alternatives are not feasible; (44 CFR 65.12(a)(2))
  - iv. The floodplain administrator may represent the permit authority for any necessary applications, approvals or endorsements such as the FEMA Community Acknowledgement Form to FEMA where affecting the special flood hazard area;

- v. Any other supporting information and data as needed for approval. (44 CFR 65.12)
- C. The permit applicant shall supply the full package approved by FEMA to the floodplain administrator including any required notifications to potentially affected property owners. [44 CFR 60.3(d)(4) and 65.12]

### **3.7 ANNEXATION OR DETACHMENT**

Upon occurrence, the floodplain administrator shall notify the DWEE and FEMA in writing whenever the boundaries of the City of Yutan and/or its ETJ have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. The floodplain administrator must include within such notification a copy of a map of the community suitable for reproduction, clearly showing the new corporate limits or the new area for which the community has assumed or relinquished floodplain management regulatory authority. (Neb. Rev. Stat. §31-1019) (44 CFR 60.2(h))

## **SECTION 4.0 FLOODPLAIN MANAGEMENT ADMINISTRATION**

### **4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

The Community Planner, appointed by the City of Yutan, is hereby designated as the community's local Floodplain Administrator. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of this ordinance. The floodplain administrator must serve to meet and maintain the commitments pursuant to 44 CFR 59.22(a) to remain eligible for National Flood Insurance for individuals and business within the political subdivision. If the local floodplain administrator position is unfilled, the City Mayor or his/her designated agent shall assume the duties and responsibilities herein. [Neb. Rev. Stat. §31-1019 and 44 CFR 59.22(b)(1)]

### **4.2 PERMITS REQUIRED**

A floodplain development permit shall be required before any development, construction, substantial improvement, or other development including placement of manufactured homes is undertaken within the lands regulated by this ordinance. No person, firm, corporation, government agency, or other entity shall initiate floodplain development without first obtaining a floodplain development permit from the local floodplain administrator. (44 CFR 60.3(a)(1) and (b)(1))

### **4.3 DUTIES OF THE FLOODPLAIN ADMINISTRATOR**

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

- A. Review, approve, or deny all applications for floodplain development permits from any entity, including permits for structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, improvements, or repairs; [44 CFR 59.1) (44 CFR 60.3(a)(3)]
- B. Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied; [44 CFR 60.3(a)(3)]

- C. 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; [44 CFR 60.3(a)(2)]
  - D. 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; [44 CFR 60.3(a)(4)]
  - E. Notify adjacent communities and the DWEE prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA; [44 CFR 60.3(b)(6)]
  - F. Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished; [44 CFR 60.3(b)(7)]
  - G. Along watercourses where FIS data is provided, determine the elevation of the base flood utilizing the FIS referenced in Section 3.2 of this ordinance. In Zone A areas where base flood elevation data is not provided, request such data produced by a registered, professional engineer or architect from the applicant or the DWEE. [44 CFR 60.3(b)(4), (c), and (d)]
  - H. 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; [44 CFR 60.3(b)(5)]
  - I. 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; [44 CFR 60.3(b)(5)]
  - J. Verify, record, and maintain record of all improvements or repairs to existing structures to ensure compliance with Section 7.0 of this ordinance; (Neb. Admin. Code, Title 455, Ch. 1, §002.21, §002.22, §004.07, and §004.08)
  - K. Ensure the comprehensive development plan as amended is consistent with this ordinance; [44 CFR 60.2(g)]
  - L. In the event the floodplain administrator discovers work done that does not comply with applicable laws or ordinances, the floodplain administrator shall revoke the permit and work to correct any possible violation. Procedures for violations and enforcement actions are established in Section 8.0 of this ordinance. (Neb. Rev. Stat. §31-1019)
- 4.32 Regarding the implementation of Neb. Admin. Code Title 455 Ch. 1 §002.21 "Substantial Damage", duties of the floodplain administrator in times of disaster shall include, but not be limited to the following:
- A. Review areas within the regulatory floodplain for damages to existing structures or other developments;
  - B. Review, approve, or deny all applications for floodplain development permits to complete any repairs in the floodplain.

- C. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the damage occurred and before any repairs are made;
  - D. Compare the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
  - E. Determine and document whether the proposed work constitutes repair of substantial damage; and
  - F. Notify the applicant if it is determined that the work constitutes repair of substantial damage and that compliance with the provisions of Section 7.0 of this ordinance is required;
- 4.33 Regarding the implementation of Neb. Admin. Code Title 455, Ch. 1 §002.22 "Substantial Improvement", duties of the floodplain administrator reviewing permits to improve structures, including additions, alterations, reconstruction, or improvements of any kind including repairs, shall include, but not be limited to the following:
- A. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work;
  - B. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
  - C. Determine and document whether the proposed work constitutes substantial improvement; and
  - D. Notify the applicant if it is determined that the work constitutes substantial improvement and that compliance with the provisions of Section 7.0 of this ordinance is required.

#### **4.4 APPLICATION FOR PERMIT AND DEMONSTRATION OF COMPLIANCE**

- 4.41 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:
- A. Identify and describe the proposed development and estimated cost to be covered by the floodplain development permit;
  - B. Describe the land on which the proposed development is to occur by lot, block, tract, house and street address, or similar description that will readily identify and definitively 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; and
  - E. Be signed by the permittee and authorized agent who may be required to submit evidence to indicate such authority.

- 4.42 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:
- A. All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;
  - B. Structures will be anchored to prevent flotation, collapse, or lateral movement;
  - C. Construction materials are resistant to flood damage;
  - D. Appropriate practices to minimize flood damage have been utilized; and
  - E. Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent water from entering or accumulating within the components during conditions of flooding.  
(Neb. Admin. Code Title 455, Ch. 1, §004.02) [44 CFR 60.3(a)(3)]
- 4.43 For all new construction, substantial improvements, or repairs to substantial damage, 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. Such certification shall be completed by a licensed land surveyor, professional engineer or architect. [44 CFR 60.3(b)(5)(i)]
- 4.44 When floodproofing is utilized for a non-residential structure, a floodproofing certificate shall be provided to the floodplain administrator. Such certification shall be completed by a licensed professional engineer or architect. [44 CFR 60.3(b)(5)(ii)]
- 4.45 For all development proposed in the floodway, a certification shall be provided to the floodplain administrator 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. Such certification shall be completed by a licensed professional engineer or architect. (Neb. Admin. Code, Title 455, Ch. 1, §005.01) [44 CFR 60.3(d)(3)]
- 4.46 For all development involving storage of materials or equipment, the applicant shall provide the floodplain administrator with plans and specifications for the operation consistent with Section 6.36 "Storage of Materials and Equipment". (Neb. Admin. Code, Title 455, Ch. 1, §004.15)
- 4.47 For all development involving the placement of recreational vehicles, the applicant shall provide plans and specifications for the operation consistent with the provisions of Section 6.37 "Recreational Vehicles." (Neb. Admin. Code, Title 455, Ch. 1, §004.13)
- 4.48 The floodplain administrator may request any other documentation or information related to the proposal as may reasonably be required to support compliance with the provisions of this ordinance.

## **SECTION 5.0 STANDARDS FOR FLOODWAY DEVELOPMENT**

### **5.1 GENERAL FLOODWAY PROVISIONS**

- 5.11 New structures for human habitation are prohibited. If the floodplain administrator determines that improvements or repairs to a lawfully existing structure for human habitation constitutes substantial improvement or substantial damage as described in Section 7.0, then the structure must comply with the floodplain management requirements for new construction. (Neb. Admin. Code, Title 455 Ch. 1, §002.22 and §005.02)
- 5.12 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 Section 6.0. (Neb. Admin. Code, Title 455, Ch. 1, §005.01) [44 CFR 60.3(d)(3)]
- 5.13 A community may permit encroachments within the regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements of such revisions as established under the provisions of Section 3.62 of this ordinance, and receives FEMA approval. [44 CFR 60.3(d)(4)]

## **SECTION 6.0 STANDARDS FOR FLOODPLAIN DEVELOPMENT**

### **6.1 GENERAL FLOODPLAIN PROVISIONS**

- 6.11 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 FIS or on base flood elevation determinations. (Neb. Admin. Code, Title 455, Ch. 1, §004.01) (44 CFR 60.3(c)(10))
- 6.12 A community may permit encroachments within the floodplain that would result in an increase in base flood elevations of more than one (1) foot, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements of such revisions as established under the provisions of Section 3.62 of this ordinance, and receives FEMA approval. (44 CFR 60.3(c)(13))

### **6.2 ELEVATION AND FLOODPROOFING REQUIREMENTS**

- 6.21 Residential Structures
- A. In Zones A, AE, A1-30, and AH, all new construction, substantially improved, or substantially damaged residential structures shall have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor, professional engineer or architect. (Neb. Admin. Code, Title 455, Ch. 1, §004.07)

- B. In Zone AO, all new construction, substantially improved, or substantially damaged residential structures 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 on the FIRM. If no depth number is specified on the FIRM, at least as high as three (3) feet above the highest adjacent grade. (Neb. Admin. Code, Title 455, Ch. 1, §004.07)
- C. New residential structures are prohibited in the floodway. If the floodplain administrator determines that improvements or repairs to a lawfully existing residential structure constitute substantial improvement or substantial damage, as described in Section 7.0, then the structure must comply with the floodplain management requirements for new construction. (Neb. Admin. Code, Title 455, Ch. 1, §002.22 and §005.02)

## 6.22 Nonresidential Structures

- A. In Zones A, AE, A1-30, and AH, all new construction, substantially improved, or substantially damaged nonresidential structures shall:
  - i. Have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor, professional engineer or architect; or
  - ii. Be dry-floodproofed so that below one (1) foot above the base flood elevation, the structure along with attendant utility and sanitary facilities:
    - 1. Is watertight with walls substantially impermeable to the passage of water;
    - 2. Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
    - 3. Is certified by a registered professional engineer or architect to meet the standards of 6.22(A)(ii)(1-2). A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.44 of this ordinance. (Neb. Admin. Code, Title 455, Ch. 1, §004.08)
- B. In Zone AO, all new construction, substantially improved, or substantially damaged nonresidential structures shall:
  - i. Have the lowest floor 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, elevated at least as high as three (3) feet; or
  - ii. Be dry-floodproofed so that below the required flood protection elevation defined in Section 6.22(B)(i), the structure along with attendant utility and sanitary facilities:
    - 1. Is watertight with walls substantially impermeable to the passage of water;
    - 2. Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

3. Is certified by a registered professional engineer or architect to meet the standards of 6.22(B)(ii)(1-2). A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.44 of this ordinance. (Neb. Admin. Code, Title 455, Ch. 1, §004.08)

#### 6.23 Enclosures Below Lowest Floor

- A. For all new construction, substantially improved, or substantially damaged structures, fully enclosed areas below the lowest floor (excluding basements) and below one (1) foot above the base flood elevation shall be used solely for the parking of vehicles, building access, or limited storage of readily removable items. (Neb. Admin. Code, Title 455, Ch. 1, §004.10)
- B. For all new construction, substantially improved, or substantially damaged structures, fully enclosed areas below the lowest floor (excluding basements) and below one (1) foot above the base flood elevation shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters. Designs for this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
- i. A minimum of two openings on different sides of each enclosed area having a net total open area of not less than one (1) square inch for every one (1) square foot of enclosed space;
  - ii. The bottom of all openings shall not be higher than one (1) foot above the interior or exterior grade, whichever is higher; and
  - iii. Openings may be equipped with screens, louvers, valves, or other coverings provided that they allow the automatic entry and exit of floodwaters and shall be accounted for in the determination of net total open area.  
(Neb. Admin. Code, Title 455, Ch. 1, §004.10) (44 CFR 60.3(C)(5)) (2018 IRC R322.2.2)

#### 6.24 Manufactured or Mobile Homes

- A. All new, substantially improved, or substantially damaged manufactured or mobile homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, shall be installed using methods and practices that minimize flood damage. For the purposes of meeting this requirement, all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement in accordance with local building codes or FEMA guidelines. If over-the-top ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
- i. Over-the-top ties shall 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 fifty (50) feet long requiring one (1) additional tie per side;
  - ii. 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 fifty (50) feet long requiring four additional ties per side; and
  - iii. Any additions to the manufactured home be similarly anchored.

(44 CFR 60.3(b)(8))

- B. All new, substantially improved, or substantially damaged manufactured or mobile homes located within floodplains on sites:
  - i. Outside of a manufactured or mobile home park or subdivision;
  - ii. In a new manufactured or mobile home park or subdivision;
  - iii. In an expansion to a new manufactured or mobile home park or subdivision; or
  - iv. In an existing manufactured or mobile home park or subdivision on which a manufactured or mobile home has incurred substantial damage as the result of a flood

Shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 6.24(A). (Neb. Admin. Code, Title 455, Ch. 1, §004.11)

- C. All new, substantially improved, or substantially damaged manufactured or mobile homes on sites in an existing manufactured or mobile home park or subdivision within floodplain areas that are not subject to the provisions of Section 6.24(B) must be elevated so that either:
  - i. The lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor, professional engineer or architect; or
  - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade, and is securely anchored to an adequately anchored foundation system in accordance with Section 6.24(A).  
(Neb. Admin. Code, Title 455, Ch. 1, §004.12)
- D. New manufactured or mobile home parks of five (5) acres or fifty (50) lots, whichever is less, shall follow the standards of Section 6.38 "Subdivisions." [44 CFR 60.3(b)(3)]

### **6.3 DESIGN AND CONSTRUCTION STANDARDS**

#### **6.31 Anchoring**

- A. All new construction and substantial improvements, including repairs to substantial damage, must be designed and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. [Neb. Admin. Code, Title 455, Ch. 1, §004.02(i)] [44 CFR 60.3(a)(3)(i)]

#### **6.32 Building Materials and Utilities**

- A. All new construction and substantial improvements, including repairs to substantial damage, must be constructed with materials and utility equipment resistant to flood damage. [Neb. Admin. Code, Title 455, Ch. 1, §004.02(ii)] [44 CFR 60.3(a)(3)(ii)]

- B. All new construction and substantial improvements, including repairs to substantial damage, must be constructed by methods and practices that minimize flood and flood-related damages. [Neb. Admin. Code, Title 455, Ch. 1 §004.02(iii)] [44 CFR 60.3(a)(3)(iii)]
- C. All new construction and substantial improvements, including repairs to substantial damage, must 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. [Neb. Admin. Code, Title 455, Ch. 1 §004.02 (iv)] [44 CFR 60.3(a)(3)(iv)]

#### 6.33 Drainage

- A. Within Zones AO and AH, adequate drainage paths around structures on slopes are required in order to guide floodwaters around and away from proposed structures. [44 CFR 60.3(c)(11)]
- B. Within any flood prone area, subdivision proposals or other new development proposals including manufactured or mobile home parks or subdivisions must have adequate drainage to reduce exposure to flood hazards. [44 CFR 60.3(a)(4)(iii)]

#### 6.34 Water Supply and Sanitary Sewer Systems

- A. 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. (Neb. Admin. Code, Title 455, Ch. 1, §004.04) [44 CFR 60.3(a)(5)]
- B. All new or replacement sanitary sewage systems shall be designed to minimize or eliminate discharge from the system into floodwaters. (Neb. Admin. Code, Title 455, Ch. 1, §004.05) [44 CFR 60.3(a)(6)(i)]
- C. On-site waste disposal systems shall be located and designed to avoid impairment to them or contamination from them during flooding. (Neb. Admin. Code, Title 455, Ch. 1, §004.06) [44 CFR 60.3(a)(6)(ii)]

#### 6.35 Other Utilities

- A. All public utilities such as gas lines, electrical, telephone, and other utilities shall be located and constructed to minimize or eliminate flood damage to such utilities and facilities. (Neb. Admin. Code, Title 455, Ch. 1, §004.03) (44 CFR 60.3(a)(4)(ii))
- B. Recreational vehicles placed in flood prone areas must only be attached to the site by quick-disconnect type utilities as established in Section 6.37 of this ordinance. (Neb. Admin. Code, Title 455, Ch. 1, §004.13) (44 CFR 60.3(c)(14))

6.36 Storage of Materials

- A. 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.
- B. The storage of other material or equipment may be allowed if the stored materials or equipment:
  - i. Are not subject to major damage by flood; and
  - ii. Are firmly anchored to prevent flotation and lateral movement resulting from hydrodynamic and hydrostatic loads; or
  - iii. Are readily removable from the flood prone area within the time available after flood warning.  
(Neb. Admin. Code, Title 455, Ch. 1, §004.15)

6.37 Recreational Vehicles

- A. Recreational vehicles to be placed on sites within the floodplain must:
  - i. Be on site for fewer than one hundred and eighty (180) consecutive days; and
  - ii. Be fully licensed and ready for highway use. A recreational vehicle that is ready for highway use:
    - 1. Must be on its wheels or jacking system;
    - 2. Must be attached to the site only by quick-disconnect type utilities and security devices; and
    - 3. Must not have any permanently attached additions.
  - iii. Recreational vehicles that cannot meet the provisions of Section 6.37(A)(i – ii) must meet the permit requirements and elevation and anchoring requirements for manufactured homes established in Section 6.24 of this ordinance.
- B. Evidence to support that the recreational vehicles are not located on site for longer than the allowable period or that they are ready for highway use may be requested by the floodplain administrator as established in Section 4.46 and 4.47 of this ordinance.  
(Neb. Admin. Code, Title 455, Ch. 1, §004.13) (44 CFR 60.3(c)(14))

6.38 Subdivisions

- A. Subdivision proposals and other proposed new development in the floodplain or partially in the floodplain, including manufactured or mobile home parks or subdivisions, are required to assure that:
  - i. All such proposals are consistent with the need to minimize flood damage;

- ii. All public utilities and facilities such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage;
- iii. Adequate drainage is provided so as to reduce exposure to flood hazards; and
- iv. Proposals for development (including proposals for manufactured or mobile home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, where base flood elevation data are not available, must 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 Letters of Map Revision.  
(44 CFR 60.3(a)(4), (b)(3))

## **SECTION 7.0 EXISTING AND NONCONFORMING USE STRUCTURES**

### **7.1 DAMAGE TO EXISTING OR NONCONFORMING USE STRUCTURES**

- 7.11 The provisions of this ordinance do not require any changes or improvements to be made to lawfully existing or nonconforming use structures. However, when a structure in the floodplain incurs damage by any means, including flood, a floodplain development permit is required for any repairs completed, and the following provisions apply:
- A. If any existing or nonconforming use structure is destroyed by any means, including flood, it shall not be reconstructed if the cost to return the structure to pre-damaged conditions when combined with any additional proposed improvements is equal to or exceeds fifty (50) percent of the pre-damage market value of the structure unless the structure and any additions are (re)constructed in conformity with the provisions of this ordinance. Such damage shall constitute "substantial damage" as defined in Section 11.0 of this ordinance.
  - B. Any repairs to an existing or nonconforming use structure in the floodway shall comply with the provisions of Section 5.0 of this ordinance.
  - C. These limitations do not include the cost of any alteration to comply with existing state or local health, sanitary, or safety codes/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.  
(Neb. Admin. Code, Title 455, Ch. 1, §002.21) (44 CFR 59.1 "Substantial damage")

### **7.2 IMPROVEMENTS TO EXISTING OR NONCONFORMING USE STRUCTURES**

- 7.21 The provisions of this ordinance do not require any changes or improvements to be made to lawfully existing or nonconforming use structures. However, when an improvement is made to a structure in the floodplain, a floodplain development permit is required, and the following provisions apply:
- A. Any additions, alterations, reconstruction, or improvements of any kind including repairs to an existing or nonconforming use structure where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall require the structure and any additions to fully comply with the provisions of this ordinance. Such improvements shall constitute a "substantial improvement" as defined in Section 11.0 of this ordinance.

- B. Any addition, alteration, reconstruction, or improvement of any kind to an existing or nonconforming use structure in the floodway shall comply with the provisions of Section 5.0 of this ordinance.
- C. Any addition, alteration, reconstruction, or improvement of any kind to an existing or nonconforming use structure that will change the compliance requirements of the structure shall require the structure and the addition to comply with the provisions governing such uses.
- D. These limitations do not include the cost of any alteration to comply with existing state or local health, sanitary, or safety codes/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.  
(Neb. Admin. Code, Title 455, Ch. 1, §002.22) (44 CFR 59.1 "Substantial improvement")

**7.3 DISCONTINUED USE OF EXISTING OR NONCONFORMING USE STRUCTURES**

- 7.31 A structure or use of a structure or premises that was lawful before the passage or amendment of this ordinance, but that is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
  - A. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance.
  - B. The Utility Department shall notify the floodplain administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.  
(Neb. Rev. Stat. §19-904.01 and §23-173.01)

**SECTION 8.0 VIOLATIONS AND ENFORCEMENT**

**8.1 VIOLATIONS**

- 8.11 Failure by any person, firm, corporation, government agency, or other entity to obtain a floodplain development permit from the floodplain administrator prior to any floodplain development shall constitute a violation of Section 4.2 of this ordinance.
- 8.12 Failure of a structure or other development to be fully compliant with the applicable provisions of this ordinance shall constitute a violation.
- 8.13 A structure or other development without a floodplain development permit, elevation certificate, applicable certification by a licensed professional engineer, or other evidence of compliance with these regulations is presumed to be in violation until the time at which such documentation is provided.  
(Neb. Rev. Stat. §31-1021) (44 CFR 59.1 "Violation")

**8.2 NOTICES**

- 8.21 When the floodplain administrator or other authorized community representative determines, based on reasonable grounds, that there has been a violation of the provisions of this ordinance, the floodplain administrator shall provide the alleged violator with a notice of such alleged violation. Such notice shall:

- A. Be in writing;
- B. Include a location and description of the development;
- C. Include an explanation of the alleged violation, including a reference to the local, state, or federal regulation the development is allegedly violating;
- D. Provide an outline of remedial actions that, if taken, will bring the development into compliance with the provisions of this ordinance;
- E. Allow a reasonable time for the performance of any remedial act required;
- F. Include a warning of the penalty that may ensue for any unresolved confirmed violations;
- G. Include contact information for the community's designated floodplain administrator or other authorized community representative; and
- H. Be served upon the property owner or their agent as the case may require;  
(Neb. Rev. Stat. §31-1021)

**8.3 PENALTIES**

- 8.31 Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granted variances or special exceptions) shall constitute a misdemeanor. (Neb. Rev. Stat. §19-913, §23-114.05)
- 8.32 Any person, firm, corporation, government agency, or other entity that violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
- 8.33 The imposition of such fines or penalties for any violation or non-compliance with this ordinance 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.
- 8.34 Nothing herein contained shall prevent the City of Yutan or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy violation.  
(Neb. Rev. Stat. §31-1021)

**SECTION 9.0 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES**

**9.1 VARIANCE AND APPEALS PROCEDURES**

- 9.11 The City Council & Mayor of Yutan are hereby established as the City of Yutan's Floodplain Appeals Board, and shall hear and decide appeals and requests for variances from the requirements of this ordinance. (Neb. Rev. Stat. §19-907 and §23-168.01)
- 9.12 The Floodplain Appeals Board 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 ordinance. (Neb. Rev. Stat. §19-910 and §23-168.02)

9.13 Any person aggrieved by the decision of the Floodplain Appeals Board, or any taxpayer may appeal such decision to the District Court. (Neb. Rev. Stat. §19-912 and §23-168.04)

9.14 In evaluating such appeals and requests, the Floodplain Appeals Board shall consider technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:

- A. The danger of life and property due to flooding or erosion damage;
- B. The danger that materials may be swept onto other lands to the injury of others;
- C. 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;
- D. The importance of the services provided by the proposed facility to the community;
- E. The necessity of the facility to have a waterfront location, where applicable;
- F. The availability of alternative locations that are not subject to flooding or erosion damage for the proposed use;
- G. The compatibility of the proposed use to the comprehensive plan and the floodplain management program for that area;
- H. The relationship of the proposed use to the comprehensive plan and the floodplain management program for that area;
- I. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- J. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters at the site; and
- K. 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.

(Neb. Admin. Code, Title 455, Ch. 1, §006)

## **9.2 CONDITIONS FOR VARIANCES**

9.21 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 exceptional hardship to the applicant.

9.22 Variances shall only be issued based upon a determination that the granting of the variance will not result in increased flood heights.

- 9.23 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 expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- 9.24 Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided items 9.25-9.29 have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- 9.25 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 that the variance is the minimum necessary to preserve the historic character and design of the structure.
- 9.26 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.
- 9.27 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 9.28 The applicant shall be given a written notice signed by a community official that:
- A. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for every \$100 of insurance coverage; and
  - B. Such construction below the base flood elevation increases risks to life and property.
  - C. Such notification shall be maintained with a record of all variance actions as required in this Section.
- 9.29 All requests for variances and associated actions and documents, including justification for their issuance, shall be maintained by the community.  
(Neb. Admin. Code, Title 455, Ch. 1, §006) (44 CFR 60.6(a))

## **SECTION 10.0 AMENDMENTS**

- 10.1 The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any changes in federal, state, or local regulations provided, however, that no such action may be taken until after public hearings by both the Planning Commission and the City Council 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 hearings shall be legally noticed as required by state and local law.
- 10.2 A copy of such amendments will be provided to the DWEE and FEMA for review and approval before being adopted.  
(Neb. Rev. Stat. §31-1017) (44 CFR 60.2(e))

## **SECTION 11.0 DEFINITIONS**

The terms defined below are considered necessary for the enforcement of this ordinance. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. Unless otherwise specified, all terms defined below follow the definitions established in Title 44 of the Code of Federal Regulations Part 59.1 and the Nebraska Minimum Standards for Floodplain Management Programs as published in the Nebraska Administrative Code Title 455:

**1% Annual Chance Flood Hazard:** see "Base Flood".

**Addition:** an extension or increase in floor area, number of stories, or height of an existing building or structure. (Nebraska Existing Building Code 2018, Chapter 202)

**Alteration:** any construction or renovation to an existing structure other than a repair or addition. (Nebraska Existing Building Code 2018, Chapter 202)

**Appeal:** a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.

**Area of Shallow Flooding:** a designated AO or AH zone on a community's FIRM with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) 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:** the flood having a one (1) percent chance of being equaled or exceeded in magnitude in any given year.

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

**Base Flood Elevation Determination:** a determination by the local floodplain administrator of the elevation of the base flood using data provided by federal, state, or other sources.

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

**Building:** see "Structure."

**Community:** any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

**Development:** any man-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. See also "obstruction."

**Drainway:** any depression two feet or more below the land which serves to give direction to a current of water less than nine (9) months of the year, and which has a bed and well-defined banks.

**Existing Construction:** any structure for which the "start of construction" commenced before the effective date of the floodplain management regulations adopted by the community as a basis for that community's participation in the NFIP. "Existing construction" may also be referred to as "existing structures."

**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 pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

**Existing Structures:** see "Existing Construction."

**Expansion to an 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 or Flooding:**

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - i. The overflow of inland or tidal waters;
  - ii. The unusual and rapid accumulation or runoff of surface waters from any source; and
  - iii. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (A)(ii) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
  
- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(i) of this definition.

**Flood Fringe:** the portion of the floodplain of the base flood which is outside of the floodway.

**Flood Hazard Boundary Map:** an official map of a community where the boundaries of the special flood hazard area have been designated as Zone A.

**Flood Insurance Rate Map (FIRM):** an official map of a community delineating both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS):** an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

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

**Floodplain Management:** the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**Floodplain Management Regulations:** zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion

control ordinance) and other applications of police power. The term describes such regulations which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing:** 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.

**Flood damage resistant material:** any building product capable of withstanding direct and prolonged contact with floodwaters, without sustaining significant damage. Prolonged contact is defined as at least 72 hours. (FEMA Technical Bulletin 2)

**Floodway or Regulatory Floodway:** 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 (1) foot.

**Freeboard:** 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:** the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

**Historic Structure:** any structure that is:

- A. Listed individually in the National Register of Historic Places maintained by the U.S. 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:
  - i. By an approved state program as determined by the Secretary of the Interior; or
  - ii. Directly by the Secretary of the Interior in states without approved programs.

**Letter of Map Change (LOMC):** an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- A. **Letter of Map Amendment (LOMA):** an amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure is not located in a special flood hazard area.  
(FEMA MT-1 Form Instructions)
- B. **Conditional Letter of Map Revision Based on Fill (CLOMR-F):** a determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is

placed on the parcel as proposed or the structure is built as proposed. (FEMA MT-1 Form Instructions)

- C. **Letter of Map Revision Based on Fill (LOMR-F)**: a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations. (FEMA MT-1 Form Instructions)
- D. **Conditional Letter of Map Revision (CLOMR)**: a formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective FIRM. (FEMA MT-2 Form Instructions)
- E. **Letter of Map Revision (LOMR)**: Letters of Map Revision are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report. (FEMA MT-2 Form Instructions)

**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 such enclosure is not built or modified so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

**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 attached to the required utilities. The term "manufactured home" shall include "mobile home" but does not include "recreational vehicle." (Neb. Rev. Stat. §76-1463)

**Manufactured Home Park or Subdivision**: a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mobile Home**: see definition for "Manufactured Home."

**New Construction**: any developments 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**: 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.

**Nonresidential Structure**. A commercial or mixed-use building where the primary use is commercial or non-habitational.

**Obstruction:** 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 by the DWEE pursuant of the Safety of Dams and Reservoirs Act (Neb. Rev. Stat. §§46-1601 to 46-1670, as amended).

**Post-FIRM Structure:** a building that was constructed or substantially improved after December 31, 1974, or on or after the community's initial FIRM dated 4/5/2010, whichever is later.

**Pre-FIRM Structure:** a building that was constructed or substantially improved on or before December 31, 1974, or before the community's initial FIRM dated 4/5/2010, whichever is later.

**Principally Above Ground:** at least fifty-one (51) percent of the actual cash value of the structure is above ground.

**Recreational Vehicle:** a vehicle which is:

- A. Built on a single chassis;
- B. Four hundred (400) square feet or less when measured from the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Flood Elevation:** the Base Flood Elevation (BFE) plus a freeboard factor as specified in this ordinance.

**Repetitive Loss:** any flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

**Residential Structure:** a non-commercial structure designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, two-to-four family, or other residential structure.

**Special Flood Hazard Area (SFHA):** the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year.

**Start of Construction:** 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. "Start of construction" also included 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 preparations, 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 shed 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:** 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:** 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, building or lot development.

**Substantial Damage:** damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

**Substantial Improvement:** any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- 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 enforcement official 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 to an applicant from the requirements of this ordinance that allows construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in exceptional hardship.

**Violation:** 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 a floodplain development permit, elevation certificate, certification by a licensed professional engineer, or other evidence of noncompliance with these regulations is presumed to be in violation until such time as documentation is provided.

**Watercourse:** any depression two (2) feet or more below the surrounding land that serves to give direction to a current of water at least nine (9) months of the year and that has a bed and well-defined banks. See also "drainway".

