

SECTION 30- FP FLOOD PLAIN DISTRICT

This zoning district is created to be appended to or overlaid on another primary zoning district for the purpose of meeting the needs of the watercourses and drain ways and the conveyance of flood waters in the County and to minimize the extent of floods and reduce the height and violence thereof; to promote health, safety, and the general welfare of the County; and to secure safety from floods.

30.1 Statutory Authorization

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare. The Legislature, in Sections 31-1001 to 31-1022, R.R.S. 1943 (as amended), has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city or village with zoning jurisdiction over the flood-prone area. Therefore, Sarpy County Board of Commissioners, Nebraska, ordains as follows:

30.2 Findings of Fact:

30.2.1 Flood Losses Resulting From Periodic Inundation. The flood hazard areas of the County 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.

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

30.2.3 Methods Used To Analyze Flood Hazards. This section uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

(A) Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The regulatory flood selected for this regulation is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this regulation. It is in the general order of a flood which could be expected to have a one percent (1%) chance of regulation in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study and illustrative materials dated on or before May 3, 2010 as amended.

(B) Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and over bank areas to convey the base flood.

(C) Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.

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

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

30.3 Statement of Purpose:

It is the purpose of this section to promote the public health, safety, and general welfare and to minimize those losses described in 30.2.1 by applying the provisions of this section to:

- 30.3.1 Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or which cause undue increases in flood heights or velocities.
- 30.3.2 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- 30.3.3 Protect individuals from buying lands which are unsuited for the intended purposes because of flood hazard.
- 30.3.4 Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

30.4 General Provisions.

Flood zones shall be those as designated by the Federal Insurance Administration's Insurance Study, the Federal Emergency Management Agency, or such other federal or state agency which may be responsible for designating flood-prone areas. Any such reference shall refer to the most-recently issued of said maps or materials, as the same may be amended from time to time. Reference to an "A zone" shall consist of flood zones A, AE, AH, AO, A99, B, and NVE. Other references to flood zones or flood zoning districts shall be to materials as mentioned in this paragraph.

- 30.4.1 Lands To Which Regulation Applies: This regulation shall apply to all lands within the jurisdiction of the County of Sarpy that are subject to a 1% or greater chance of flooding in any given year, or based on best available data, as identified as numbered and unnumbered A Zones (including AE, AO and AH Zones) on the effective Flood Insurance Rate Map (effective FIRM) dated May 3, 2010, or best available data as determined by more recent hydrologic and hydraulic studies completed or approved by the County or other government agency. Requirements established in Section 30.7 of this regulation shall apply to the Zoning Districts FW and FF. In all areas covered by this section no development shall be permitted except upon a permit to develop granted by the County Board of Commissioners or their duly designated representative under such safeguards and restrictions as the Commissioners or their designated representative may reasonably impose for the promotion and maintenance of the general welfare and health of the inhabitants of the County.
- 30.4.2 Enforcement Officer The Sarpy County Planning Director is hereby designated as Sarpy County's duly designated Enforcement Officer under this regulation.

- 30.4.3 Rules For Interpretation Of District Boundaries: The boundaries of the floodway and flood fringe overlay districts shall be determined by scaling distances on the official zoning map, the Flood Insurance Rate Map or Floodway Map, or on the Digital Flood Insurance Rate Map. Where interpretation is needed as to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The location of the floodway overlay district boundary may be based on a map completed or approved by the County or other government agency, provided the boundary is not less restrictive than that shown on the effective FIRM. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his/her case to the Board of Adjustment and to submit his/her own technical evidence, if he/she so desires.
- 30.4.4 Compliance: Within identified special flood hazard areas of this community, no development located within known flood hazard areas of the County shall be located, extended, converted or structurally altered without full compliance with the terms of this regulation and other applicable regulations.
- 30.4.5 Abrogation and Greater Restrictions: It is not intended by this regulation to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this regulation imposes greater restrictions, the provisions of this regulation shall prevail. All other resolutions inconsistent with this regulation are hereby repealed to the extent of the inconsistency only.
- 30.4.6 Interpretation: In their interpretation and application, the provisions of this Regulation 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.
- 30.4.7 Non-Conforming uses/structures value of reconstruction: For purposes of reconstruction of non-conforming uses and/or structures, construction values shall be cumulative over time.
- 30.4.8 Warning and Disclaimer of Liability: The degree of flood protection required by this regulation is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This regulation does not imply that areas outside floodway and flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This section shall not create liability on the part of the County or any officer or employee thereof for any flood damages that may result from reliance on this regulation or any administrative decision lawfully made there under.

30.4.9 Severability: If any section, clause, provision or portion of this regulation is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Regulation shall not be affected thereby.

30.4.10 Appeal: Where a request for a permit to develop is denied by the County Board, the applicant may appeal directly to the District Court .

30.5 **Development Permit:**

30.5.1 Permit Required: No person, firm or corporation shall initiate any development or substantial improvement as defined in Section 44 of this regulation or cause the same to be done without first obtaining a separate permit for development, .

30.5.2 Administration: The Director of Planning is hereby appointed to administer and implement the provisions of this regulation.

Duties of the Director of Planning shall include, but not be limited to:

(A) Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this section have been satisfied.

(B) Review applications for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required.

(C) Review all subdivision proposals and other proposed new development, including mobile/manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.

(D) Notify adjacent communities, the U.S. Army Corps of Engineers, and the Nebraska Department of Natural Resources prior to any alteration or relocation of a watercourse,, and submit evidence of such notification to the Federal Emergency Management Agency.

(E) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(F) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially-improved structures.

(G) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially-improved structures have been flood-proofed.

(H) Maintain records of all floodplain development permits and or building permits within the floodway or flood fringe overlay district to ensure that structures are not substantially improved over time. Permits within the flood plain shall be cumulatively calculated over time to determine whether or not they become a substantial improvement.

(I) Filling of the flood fringe associated with new development within the Papillion Creek System shall be limited to 25% of the flood fringe in the floodplain development application project area, unless approved mitigation measures are implemented. The remaining 75% of flood fringe within the project area shall be designated as a restricted fill zone. For redevelopment, these provisions may be modified or waived in whole or in part by the local jurisdiction.

(J) Submit all permits to County Board of Commissioners for its approval. Said approval shall be shown on each flood plain permit.

(K) Facilitate the approval of new Flood Insurance Rate Maps or best available data as necessary.

30.6 Application for Permit:

To obtain a permit, the applicant shall first file an application in writing, along with a non-refundable fee of \$100.00, on a form furnished for that purpose. Every such application shall:

- 30.6.1 Identify and describe the development to be covered by the flood plain development permit.
- 30.6.2 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 definitively locate the proposed building or development.
- 30.6.3 Indicate the use or occupancy for which the proposed development is intended.
- 30.6.4 Be accompanied by plans and specifications for proposed construction, including but not limited to the following information: 1) existing (natural) grades, 2) proposed grades as a result of proposed development, 3) the proposed lowest floor elevation and any higher floor elevations, including attached garage, of any proposed structures, 4) the lowest and highest adjacent grades next to any proposed structures, 5) the most restrictive base flood elevation nearest the proposed development..
- 30.6.5 Be signed by the permittee or his/her authorized agent who may be required to submit evidence to indicate such authority.
- 30.6.6 Give such other information as reasonably may be required by the Sarpy County Director of Planning.
- 30.6.7 Comments from the Papio-Missouri River Natural Resources District shall be solicited by the Sarpy County Planning Department concerning each application for a flood plain development permit.
- 30.6.8 When flood-proofing is utilized and/or when elevation one foot above regulatory flood level is achieved by piling for a particular structure, the Director of Planning shall be presented with a construction and elevation certification from a registered professional engineer or architect.

30.7 Establishment of Zoning Districts:

Along watercourses where a floodway has been established, the mapped flood plain areas within the jurisdiction of this section are hereby divided into the two following districts: a floodway overlay district (FW) and a flood fringe overlay district (FF), identified in the Flood Insurance Study, effective FIRM, or best available data. The zoning districts created by this regulation overlie other zoning districts and place additional restrictions upon the manner in which lands in such underlying district may be used. Within the FF and FW districts all uses not meeting the standards of this regulation and those standards of the underlying zoning district shall be prohibited.

30.8 Standards for Flood Plain Development:

The standards within this section are applicable within both the FF and FW districts and shall be used in coordination with the FF and FW overlay district regulations which follow this section.

- 30.8.1 No permit for development shall be granted for new construction, substantial improvements and other development(s) including the placement of mobile/manufactured homes within all numbered and unnumbered A zones (including AE, AO, and AH zones) unless the conditions of this section are satisfied.
- 30.8.2 All areas identified as the "A Zones" on the FIRM or best available data are subject to inundation of the base flood; however, the water surface elevation is not provided. The unnumbered A zones shall be subject to all development provisions of the flood fringe and floodway overlay district regulations. If Flood Insurance Study data is not available, the community shall utilize any base flood data currently available from Federal, State or other sources.
- 30.8.3 Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas 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 on the effective FIRM or best available data.
- 30.8.4 New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of mobile/manufactured homes and other developments shall require:
- (A) Design or anchorage to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - (B) New or replacement water supply systems and/or sanitary sewage systems designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and onsite waste disposal systems located so as to avoid impairment or contamination.

- (C) Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and 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.
- (D) All electrical equipment and sanitary facilities, including circuits, installed electric appliances, toilets, sinks, drains, in new developments and substantial improvements shall be located so as to not be subject to flooding or shall be flood-proofed to prevent damage resulting from flood levels exceeding the base flood elevation by one foot. Backflow valves should be installed on all septic lines leading from the structure.
- (E) Storage of Material and Equipment:
 - 1. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
 - 2. Storage of other material or equipment may be allowed if not subject to damage by floods and firmly anchored to prevent floatation, or if readily removable from the area within the time available after flood warning.
 - 3. Subdivision proposals and other proposed new development are required to assure that
 - a) all such proposals are consistent with the need to minimize flood damage;
 - b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage;
 - c) adequate drainage is provided so as to reduce exposure to flood hazards, and
 - d) proposals for development (including proposals for mobile/manufactured home parks and subdivision) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the base flood elevation.

30.9 Flood Fringe Overlay District - (Including AO and AH Zones):

30.9.1 Permitted uses: Any use permitted in section 30.10 and permitted in the underlying zoning district shall be permitted in the Flood Fringe Overlay District, but no use shall be permitted in the district unless the standards of Section 30.8 are met.

30.9.2 Standards For The Flood Fringe Overlay District:

- (A) Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to one foot above the base flood elevation, based on best available data.

- (B) Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to one foot above the base flood elevation, based on the best available data or, together with attendant utility and sanitary facilities, to be flood-proofed so that below the base flood elevation the structure is watertight with walls 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 subsection are satisfied. Such certification shall be provided to the Sarpy County Planning Director.
- (C) Require 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. The area below lowest floor subject to flooding shall be a maximum of four (4) feet in height measured from the bottom of the floor joists, unless used for parking of vehicles. Areas 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 floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A 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. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (D) All electrical equipment and sanitary facilities, including circuits, installed electric appliances, toilets, sinks, drains, in new developments and substantial improvements shall be located so as to not be subject to flooding or shall be flood-proofed to prevent damage resulting from flood levels exceeding the highest base flood elevation available, or based on best available data, by one foot. Backflow valves should be installed on all septic lines leading from the structure.
- (E) Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- (F) All mobile/manufactured homes shall be anchored to resist floatation, collapse, or lateral movement. Mobile/manufactured homes must be anchored in accordance with local building codes or 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:
 - 1. Over-the-top ties be provided at each of the four corners of the mobile/manufactured home with two additional ties per side at the intermediate locations and mobile/manufactured homes less than 50 feet long requiring one additional tie per side.

2. Frame ties are provided at each corner of the home with five additional ties per side at intermediate points and mobile/manufactured homes less than 50 feet long requiring four additional ties per side.
3. All components of the anchoring system are capable of carrying a force of 4800 pounds.
4. Any additions to mobile/manufactured homes are similarly anchored.

(G.) Require that all mobile/manufactured homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:

- (1) Outside of a mobile/manufactured home park or subdivision,
- (2) In a new mobile/manufactured home park or subdivision,
- (3) In an expansion to an existing mobile/manufactured home park or subdivision, or
- (4) In an existing mobile/manufactured home park or subdivision on which a mobile/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 mobile/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 provision of Section 30.9.2(F).

(H.) Require that mobile/manufactured homes to be placed or substantially improved on sites in an existing mobile/manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of Section 30.9.2(G) be elevated so that either:

- (1) The lowest floor of the mobile/manufactured home is at or above **one (1) foot** above the base flood elevation, or
- (2) The mobile/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 Section 30.9.2(F).

30.9.3 Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, or (ii) meet the permit requirements and the elevation and anchoring requirements for "mobile/manufactured homes" of this regulation. 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.

30.9.4 Located within the areas of special flood hazard established in Section 30.4.1 are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

- (A.) All new construction and substantial improvements of 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 in feet on the community's FIRM (at least two feet if no depth number is specified).
- (B.) All new construction and substantial improvements of non-residential structures shall:
 - (1) 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 community's FIRM (at least two feet if no depth number is specified), or
 - (2) Together with attendant utility and sanitary facilities be completely floodproofed to or above the base flood so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the official as set forth in Section 30.6.8.
- (C.) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

30.10 Floodway Overlay District:

30.10.1 Permitted Uses: Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other regulation . The following are recommended uses for the Floodway District:

- (A) Open space uses not requiring a closed building, such as agricultural cropland, livestock feeding and grazing, or open public and private recreation areas.
- (B) Wire fences or other appurtenances may be constructed which would not constitute an obstruction or debris-catching obstacle to the passage of flood waters.
- (C) Railroads, streets, bridges, public utility wire and pipelines for transmission and local distribution.
- (D) Commercial excavation of materials from pits, strips, or pools; provided, that no stockpiling of materials, products or overburden shall be such as to create a potential restriction to the passage of flood waters.

- (E) Non-restrictive improvements in stream channel alignment, cross section, and capacity in the normal maintenance thereof.
- (F) Uses of a type not appreciably damaged by flood waters; provided, no structures for human habitation shall be permitted.

30.11 STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT

The uses enumerated above shall only be permitted if 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 occurrence of the base flood discharge. These uses are subject to the standards of Section 30.8 and 30.9. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or of this regulation, in meeting the standards of this section.

30.12 Appeal:

30.12.1 An applicant may appeal the County Board of Commissioner's decision on a Flood Plain Development Permit to the District Court .

30.13 NONCONFORMING USE IN A FF OR FW DISTRICT

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

- (A.) No such structure or use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.
- (B.) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this regulation. The applicable utilities shall be contacted by the Sarpy County Planning Director to verify instances of nonconforming uses where utility services have been discontinued for a period of 12 months.
- (C.) Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
- (D.) When any nonconforming use or structure is destroyed, by any means, including flood, it shall not be reconstructed when the cost of reconstruction exceeds 50 percent of the market value of the structure before the damage occurred (except that if the structure is reconstructed in conformity with the provisions of this regulation). 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, provided that the alteration shall not preclude its continued designation.

30.14 Penalties for Violation

Violation of the provisions of this section or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor according to Nebraska Revised Statutes Section 23-114.05 (Reissue 2007). Nothing herein contained shall prevent the County Board of Commissioners or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy the violation. Each day such violation continues shall be considered a separate offense.

30.15 Amendments

The regulations, restrictions, and boundaries set forth in this regulation may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in Sarpy County. At least 10 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency.

The regulations of this section are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Flood Plain Management Act.