

**2017 Revised Floodplain Management Ordinance  
For Minnehaha County**

**Ordinance MC 51-17  
Adopted: August 15, 2017**



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## **ARTICLE 1.00. GENERAL PROVISIONS**

### **1.01. Title.**

These regulations shall be known as the Minnehaha County Floodplain Management Ordinance.

#### **1.01.1 Statutory Authorization.**

The Legislature of the State of South Dakota has in SDCL 7-18-14 & 7-18-15 delegated the authority of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of County Commissioners of Minnehaha County, SD does ordain the following findings of fact:

1. The flood hazard areas of Minnehaha County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

#### **1.01.2 Repeal.**

Ordinance MC48-17 is hereby repealed.

### **1.02. Purpose.**

The purpose of this ordinance is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that potential buyers are notified that property is in a flood area.

### **1.03. Scope.**

The provisions of this ordinance shall apply to all proposed development in a flood hazard area within the unincorporated area of Minnehaha County.

#### **1.04. Applicability.**

This ordinance provides minimum requirements for any development located in flood hazard areas, including but not limited to subdivision of land, installation of utilities, placement and replacement of manufactured homes, new construction and repair, reconstruction, rehabilitation, or additions to new construction, and substantial improvement of existing buildings and structures, including restoration after damage and the placement of fill, debris, equipment, or materials.

#### **1.05. Establishment of flood hazard areas.**

The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study, Minnehaha County, South Dakota - Unincorporated Areas", dated with the accompanying flood insurance rate map (FIRM) dated September 2, 2009, November 16, 2011, March 7, 2017, or October 5, 2017 including flood hazard boundaries and floodways, and related supporting data. The flood hazard map and supporting data are hereby adopted by reference and declared to be part of this ordinance.

#### **1.06. Abrogation and Greater Restrictions.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **1.07. Interpretation.**

In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body;
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

#### **1.08. Warning and disclaimer of liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Minnehaha County, any officer or employee thereof, or the Federal Emergency Management Agency for any

flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

**1.09 Severability.**

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

## ARTICLE 2.00. DEFINITIONS

For purposes of these regulations certain terms are hereby defined as follows. Any word not herein defined shall be as defined in any recognized standard English dictionary.

1. **Alluvial Fan Flooding** means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.
5. **Apex** means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.
10. **Appeal Board** means the Board of Adjustment
15. **Area of Shallow Flooding** means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
20. **Area of Special Flood Hazard** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.
25. **Basement** means the portion of a building having its floor sub-grade (below ground level) on all sides.
30. **Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year.
35. **Base flood elevation** means the elevation of the base flood, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).
40. **Building** see Structure.
45. **Conditional Letter of Map Revision (CLOMR)** means FEMA's comment on a proposed project that would, upon construction, affect the hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations, or Special Flood Hazard Area. The letter does not revise an effective map; it indicates whether the project, if build as proposed, would be recognized by FEMA.

50. **Critical Feature** means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.
55. **Development** means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, operations and other land disturbing activities.
60. **Elevated Building** means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.
65. **Existing Construction** means any buildings and structures for which the start of construction commenced before September 5, 1979. Existing construction may also be referred to as existing structures.
70. **Existing Manufactured Home Park Or Subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
75. **Existing Structures.** See "existing construction".
80. **Expansion To An Existing Manufactured Home Park Or Subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the Construction of streets, and either final site grading or the pouring of concrete pads).
85. **Flood or flooding** means a general and temporary condition of partial or complete inundation of normally dry land from:
1. The overflow of inland or tidal waters;

2. The unusual and rapid accumulation or runoff of surface waters from any source.
90. **Flood Hazard Area** means the greater of the following two areas:
1. The area within a floodplain subject to a one percent or greater chance of flooding in any year;
  2. The land area subject to flood hazards and shown on a flood insurance rate map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30.
95. **Flood insurance rate map (FIRM)** means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
100. **Flood insurance study** means the official report provided by the Federal Emergency Management Agency containing the flood insurance rate map (FIRM), flood boundaries and floodways, water surface elevation of the base flood and supporting technical data.
115. **Flood Proofing** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
120. **Flood resistant materials** means any construction material capable of withstanding direct and prolonged contact with flood waters without sustaining any damage that requires more than low-cost cosmetic repair (such as painting).
125. **Floodplain Administrator** means the Planning Director designated by the Minnehaha County Board of Commissioners.
130. **Floodway** means the channel of the river, creek, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
135. **Functionally dependent facility** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading or unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.
140. **Highest Adjacent Grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
145. **Historic Structure** means any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
  - a. by an approved state program as determined by the Secretary of the Interior or;
  - b. directly by the Secretary of the Interior in states without approved programs.

**150. Letter of Map Amendment (LOMA)** means an official amendment, by letter, to an effective map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area and are usually issued because a property has been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation.

**155. Letter of Map Revision (LOMR)** means FEMA's modification to an effective Flood Insurance Rate Map, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic of hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations, or the Special Flood Hazard Area.

**160. Letter of Map Revision Based on Fill (LOMR-F)** means FEMA's modification of the Special Flood Hazard Area shown on the Flood Insurance Rate Map based on the placement of fill outside of the existing regulatory floodway.

**165. Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or 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 so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.

**170. Manufactured home** means a structure that is transportable in one or more sections, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**175. Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**180. New Manufactured Home Park Or Subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of

utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

- 185. New Construction** means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- 190. Person** means any individual, partnership, firm, association, municipality, public or private corporation, state, tribe, nation, political subdivision, trust, estate or any other legal entity, including any officer or governing or managing body thereof.
- 195. Recreational vehicle** means a vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. A recreational vehicle is ready for highway use if it is fully licensed 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.
- 200. Special flood hazard area.** See "area of special flood hazard"
- 205. Start of construction** (for other than new construction) includes substantial improvement and means the date the building permit was issued for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns, or any work beyond the stage of excavation: or the placement of a mobile home on a foundation. Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- 210. Structure** means any walled and roofed building or manufactured home, including a gas or liquid storage tank which is principally above ground.

215. **Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
220. **Substantial improvement** means any repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:
1. Any project for improvement of a structure to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary conditions; or
  2. Any alteration of a “historic structure” provided that the alteration will not preclude the structure's continued designation as a “historic structure”.
225. **Variance** means a grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where strict enforcement would result in unnecessary hardship.
230. **Violation** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

## **ARTICLE 3.00. POWERS AND DUTIES**

### **3.01. General.**

The Minnehaha County Director of Planning and Zoning is hereby appointed the Floodplain Administrator. The Floodplain Administrator is hereby authorized and directed to enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in conformance with the intent and purpose of this ordinance. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this ordinance.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
2. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
3. Review, approve or deny all applications for development permits required by adoption of this ordinance.
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
8. When base flood elevation data has not been provided in accordance with Article 3.06, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 6.

9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

### **3.02. Delegation of power.**

The Floodplain Administrator shall have the authority to delegate power to other employees to assist in the administration and enforcement of this ordinance.

### **3.03. Permit applications.**

The Floodplain Administrator shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall:

1. be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
2. be constructed with materials resistant to flood damage,
3. be constructed by methods and practices that minimize flood damages, and
4. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### **3.04. Phased approval.**

The Floodplain Administrator is authorized to issue permits for the construction of foundations or any other part of a building or structure pending the submission of certificates required in Section 4.06. The holder of such permit for the foundation or other parts of the building or structure shall proceed at the holder's own risk without assurance that a permit for the entire structure will be granted.

### **3.05. Other permits.**

It shall be the responsibility of the Floodplain Administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by federal or state agencies having jurisdiction over such development.

### **3.06. Determination of base flood elevations.**

If base flood elevations are not specified, the Floodplain Administrator is authorized to require the applicant to:

1. Obtain, review and reasonably utilize data available from a federal, state or other source; or
2. Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques. Such analyses shall be undertaken by a professional engineer licensed in this state who shall certify that the technical methods used reflect currently accepted engineering practices. Studies, analyses, and computations shall be submitted in sufficient detail to allow thorough review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

### **3.07. Watercourse alteration.**

Prior to issuing a permit for any alteration or relocation of any watercourse in a flood hazard area, the Floodplain Administrator shall require the applicant to:

1. Provide notification of the proposal to the appropriate authorities of all affected adjacent government jurisdictions, the South Dakota Office of Emergency Management, and the Federal Insurance Administrator. A copy of the notification shall be maintained as a permanent record by the Floodplain Administrator.
2. Demonstrate that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

### **3.08. Records.**

The Floodplain Administrator shall maintain a permanent record of all permits issued in flood hazard areas, including copies of inspection reports, required certifications, and notifications.

### **3.09. Subdivisions.**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is less.
4. All such proposals are consistent with the need to minimize flood damage;

5. All public utilities and facilities, such as sewer, gas, electric, and water systems are located and constructed to minimize or eliminate flood damage;
6. Adequate drainage is provided to reduce exposure to flood hazards.

## **ARTICLE 4.00. PERMITS AND CERTIFICATES**

### **4.01. Required.**

Any person who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit prior to the start of development. Permits are required for all proposed construction and other developments including the placement of manufactured homes, within Zone A on the community's FHBM or FIRM.

### **4.02. Application for permit.**

The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. Such application shall:

1. Identify and describe the development to be covered by the permit;
2. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and locate the site;
3. Indicate the use and occupancy for which the proposed development is intended;
4. Be accompanied by construction documents, grading and filling plans, and other information deemed appropriate by the Floodplain Administrator;
5. State the valuation of the proposed work when required;
6. Be signed by the owner or the owner's authorized agent.

### **4.03. Validity of permit.**

The issuance of a permit under this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of this ordinance.

### **4.04. Expiration.**

A permit shall become invalid if the proposed development is not commenced within one year after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, extensions of time.

### **4.05. Suspension or revocation.**

The Floodplain Administrator is authorized to suspend or revoke a permit issued under this ordinance whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of Minnehaha County.

#### **4.06. Flood hazard certificates.**

The Floodplain Administrator may require submittal of the following certificates:

1. *Elevation certificate.* upon the placement of the lowest floor, including basement, prepared by a registered professional engineer or land surveyor, of the elevation of the lowest floor, including basement. The Floodplain Administrator may require submission of the certificate upon the placement of the lowest floor, including basement, prior to further vertical construction;
2. *Designed opening certificate.* prepared by a registered professional engineer for fully enclosed areas below the base flood elevation where provisions to allow for the automatic entry and exit of flood waters do not meet the minimum requirements in section 6.02;
3. *"No-rise" certificate.* along with supporting hydraulic computations, prepared by a registered professional engineer, that development in a designated floodway will result in no increase in the base flood heights during the occurrence of a base flood (100- year) discharge;
4. *Fill placement certification.* prepared by a registered professional engineer when required by the Floodplain Administrator to insure proper compaction and slope protection for fill placed in the floodplain;
5. *Manufactured home foundation design certification.* to meet the requirements in section 6.02.

#### **4.07. Permit Fees.**

A fee of \$50.00 shall be charged for the filing of a Floodplain Management Ordinance Permit.

## **ARTICLE 5.00. VARIANCE PROCEDURES**

### **5.01. General.**

The Minnehaha County Planning Commission shall act as the Appeal Board to hear and render judgment on requests for variances from the requirements of this ordinance.

The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

### **5.02. Operational procedure.**

The Appeal Board shall meet at the regularly scheduled meetings of the Planning Commission. All meetings of the Appeal Board shall be open to the public and all business coming before the Board shall be transacted at such meetings.

The Appeal Board shall keep minutes of its proceedings, records of examinations and other official actions, all of which shall be filed in the Office of Planning and Zoning and shall be a public record.

### **5.03. Records.**

The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency and the State Office of Emergency Management upon issuing a variance.

### **5.04. Historic structures.**

A variance is authorized to be issued for the repair or rehabilitation of a historic structure upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

### **5.05. Functionally dependent facilities and accessory building.**

A variance is authorized to be issued for the construction or substantial improvement of a functionally dependent facility and minor accessory buildings (two-car garages and smaller) used solely for parking or limited storage provided the structure conforms to the provisions of FEMA/FIA-TB 1, TB-2, AND TB 7 and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

#### **5.06. Restrictions.**

The board of adjustment shall not issue a variance for any proposed development in a floodway that would have the effect of waiving requirements set forth in Article 7.00 of this ordinance.

#### **5.07. Considerations.**

In reviewing applications for variances, the board of adjustment shall consider all technical evaluations, all relevant factors, all other portions of this ordinance, and the following:

1. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
4. The importance of the services to the community which will be provided by the proposed development;
5. The availability of alternate locations for the proposed development that are not subject to flooding or erosion;
6. The compatibility of the proposed development with existing and anticipated development;
7. The relationship of the proposed development to the comprehensive plan and floodplain management program for that area;
8. The safety of access to the property in times of flood for ordinary and emergency vehicles;
9. The expected heights, velocity, duration, rise, and debris and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site, and;
10. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

#### **5.08. Conditions for issuance.**

Variances shall only be issued by the board of adjustment upon:

1. A technical showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site renders the elevation standards inappropriate; and
2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable; and
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
4. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and

5. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**5.09. Permit Fees.**

A fee of \$250.00 shall be charged for the filing of a Floodplain Management Ordinance Variance application.

## **ARTICLE 6.00. FLOOD HAZARD DEVELOPMENT STANDARDS**

### **6.01 General Standards.**

In all areas of flood hazards the following provisions are required for new construction or substantial improvements:

1. Flood proofing is not accepted as a method of protection for residential development within the jurisdiction of this ordinance.
2. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
4. All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
5. New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at or above the base flood elevation. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated at or above the base flood elevation unless they conform to the provisions of the electrical code for location of such items in wet locations. Duct systems shall not be installed below the base flood elevation.
6. Sewer facilities. All new or replaced sanitary sewer facilities, sewer treatment plants (including all pumping stations and collector systems) and onsite waste disposal systems, shall be designed to minimize or eliminate infiltration of flood waters into the facilities and discharges into flood waters. The new or replacement system must be approved by the South Dakota Department of Environment and Natural Resources.
7. All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the systems.
8. Protection of water supply and sanitary sewage systems. All new and replacement water supply systems shall be designed to minimize infiltration of flood waters into the systems in accordance with the plumbing code. New and replacement sanitary sewage systems shall be designed to minimize infiltration of flood waters into the systems and discharges from systems into flood waters in accordance with the plumbing code.
9. Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property.
10. All materials or equipment placed in a flood hazard area that are flammable, explosive or injurious to human, animal or plant life is prohibited, unless elevated two feet above the base flood elevation. Other materials, equipment, or debris that are buoyant shall be anchored to prevent movement due to flood waters.

### **6.02 Specific Standards.**

In all areas flood hazard where base flood elevation data has been provided as set forth in this ordinance, the following provisions are required:

1. *Residential Construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard has been satisfied.
2. *Nonresidential Construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level 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 develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained by the Floodplain Administrator.
3. *Enclosures.* New construction and substantial improvements, including crawl spaces, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one foot above grade.
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
4. *Subdivision Standards.* The following requirements shall apply in the case of any proposed subdivision, including proposals for manufactured home parks and subdivisions, any portion of which lies within a flood hazard area:
  - a. The flood hazard area, including floodways shall be delineated on preliminary and final subdivision plans; and
  - b. Base flood elevations shall be shown on preliminary and final subdivision plans; and
  - c. Residential building lots shall be provided with adequate buildable area outside the floodway; and
  - d. The design criteria for utilities and facilities set forth in this ordinance and appropriate codes, ordinances and laws shall be met; and
  - e. Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

## 5. *Manufactured Homes*

- a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. In A-1-30, AH, and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at or above the Base Flood Elevation; OR the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

## 6. *Recreational Vehicles.*

- a. *Temporary placement* - Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.
- b. *Permanent placement* - Recreational vehicles that are not ready for highway use, or that are to be placed on a site for more than 180 consecutive days shall meet the requirements of Section 6.02 #5 for Manufactured Homes.

### **6.03 Standards for areas of Shallow Flooding (AO/AH Zones)**

Located within the areas of special flood hazard established in Article 1.05, are areas designated as shallow flooding. 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 where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. *Residential Construction.* All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

2. *Non-Residential Construction.* All new construction and substantial improvements of **non-residential** structures;
  - a. have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;
  - b. together with attendant utility and sanitary facilities be designed so that below the base flood level 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 of effects of buoyancy.
3. *Certification.* A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, 6.03 are satisfied.
4. *Drainage.* Within Zones AH or AO, adequate drainage paths around structures on slopes must guide flood waters around and away from proposed structures.

## **ARTICLE 7.00. FLOODWAY DEVELOPMENT STANDARDS**

### **7.01. Development in floodways.**

Floodways located within areas of special flood hazard established in Article III, are extremely hazardous areas due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Designate a regulatory floodway which will not increase the Base Flood level more than 1 foot.
2. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V in this ordinance.
4. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted 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 through FEMA.

### **7.02. Floodway revisions.**

A floodway encroachment that increases the level of the base flood is authorized if the applicant has received a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency.

### **7.03. Conditional Letter of Map Revision (CLOMR).**

A CLOMR is required in the following situations:

1. BFE/no floodway (demonstrate <1.0 ft increase)
  - a. A project on a stream or river that has been studied through detailed hydrologic and hydraulic analyses and for which Base Flood Elevations (BFEs) have been specified, but a floodway has not been designated. If the developer/property owner/community proposes to allow development that would result in more than a 1.0 foot increase in the BFE, a CLOMR must first be obtained.
  - b. 44 CFR 60.3 (c)(10): Result in an increase in the base flood water-surface elevation (WSEL) of greater than 1.00 foot for streams with BFEs specified but no regulatory floodway designated.
2. BFE/floodway (no-rise)
  - a. The second situation requiring a CLOMR is for a project on a stream or river for which detailed analyses have been conducted and BFEs and a floodway have been

designated. If the community proposes to allow development totally or partially within the floodway that would result in any (greater than 0.0 foot) increase in the BFE, a CLOMR must be obtained.

- b. 44 CFR 60.3 (d)(3): Result in any base flood WSEL increase from proposed construction within a regulatory floodway.
3. As the community is the responsible entity to issue floodplain development permits, the community may require a CLOMR or LOMR as part of their permitting process at any time the floodplain administrator feels is necessary. This includes but is not limited to even when an engineer has produced a no-rise analysis.

## ARTICLE 8.00. ENFORCEMENT

### 8.01. Stop work order.

1. *Authority.* Whenever the Floodplain Administrator finds any work or activity regulated by this ordinance being performed in a manner contrary to the provisions of this ordinance, the Floodplain Administrator is authorized to issue a stop work order.
2. *Issuance.* The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.
3. *Unlawful continuance.* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

### 8.02. Violations.

1. *Unlawful acts.* It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this ordinance, or cause same to be done, in conflict with or in violation of any of the provisions of this ordinance.
2. *Notice of violation.* The Floodplain Administrator is authorized to serve a notice of violation on the person responsible for any development in violation of the provisions of this ordinance, or in violation of a permit or certificate issued under the provisions of this ordinance. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.
3. *Prosecution of violation.* If the notice of violation is not complied with promptly, the appropriate authorities of Minnehaha County, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the real estate or structure in violation of the provisions of this ordinance or of the order or direction made pursuant thereto.
4. *Violation penalties.* In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the National Flood Insurance Program (NFIP) regulation, to qualify for the sale of federally-subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions."

In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally-enforceable, applied uniformly throughout the community to all

privately and publicly owned land within flood-prone (i.e. mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances or codes.”

**THEREFORE:**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor and shall be punished pursuant to SDCL 7-18A-2. A Class 2 misdemeanor is punishable by thirty days imprisonment in a county jail or five hundred dollars fine, or both. Each and every day of the continued violation may constitute a separate offense. In addition to any fine and imprisonment for each violation, violators shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Minnehaha County from taking such other lawful action as is necessary to prevent or remedy any violation.

Adopted this 15<sup>th</sup> day of August, 2017.

Effective: September 19, 2017

MINNEHAHA COUNTY BOARD OF COUNTY COMMISSIONERS

  
Chair, Board of County Commissioners

ATTEST:

  
County Auditor

1 <sup>st</sup> Reading	July 18, 2017
Legal Ad. – Argus Leader, Dell Rapids Tribune and Brandon Challenger	July 24, 2017 July 26, 2017 July 26, 2017
Public Hearing	August 15, 2017
Fact of Adoption – Argus Leader, Dell Rapids Tribune, and Brandon Challenger	August 21, 2017 & August 28, 2017 August 23, 2017 & August 30, 2017 August 23, 2017 & August 30, 2017
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