

ORDINANCE NO. 2017

AN ORDINANCE TO AMEND SECTION 5-7 OF THE AUGUST 2006 LAND DEVELOPMENT ORDINANCE, FOR THE CITY OF PLATTSMOUTH, NEBRASKA RELATED TO THE FLOODPLAIN / FLOODWAY OVERLAY DISTRICT; TO REPEAL ALL ORDINANCES IN CONFLICT; TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM; AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PLATTSMOUTH, NEBRASKA.

Section 1. Section 5-7 of the August 2006 Land Development Ordinance for the City of Plattsmouth, Nebraska, is hereby amended and restated in its entirety with an effective date of August 14, 2024 as follows.

**5-7** FP/FW – Floodplain/Floodway Overlay District

- A. Statutory Authorization, Purpose, and Findings of Fact
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 *Nebraska Revised Statutes* Sections 31-1001 to 31-1022 (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 floodprone area.
  2. Purpose: It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 5-7(A)(3) by applying the provisions of this ordinance to:
    - a. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
    - b. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
    - c. 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; and
    - d. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.
  3. Findings of Fact:
    - a. Flood Losses Resulting from Periodic Inundation: Flood hazard areas of the City of Plattsmouth, Nebraska, are subject to inundation which results in loss of life or property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
    - b. General Causes of these Flood Losses: These flood losses are caused by the cumulative effect of obstruction in floodways causing increases in flood heights and velocities as well as the occupancy of flood areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damages.

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

B. General Provisions.

1. Land to which Ordinance Applies: This ordinance shall apply to all lands within the jurisdictions of the City of Plattsmouth identified on the Flood Insurance Rate Map (FIRM) panels #31025C0140D, #31025C0255D, #31025C0260D, and #31025C0300D dated November 26, 2010 and #31025C0115E and #31025C0120E dated August 14, 2024 as Zones A, A1-30, AE, AO, or AH and within the Zoning Districts FW and FF established in Section 5-7(C) 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 City Council or its duly designated representative under such safeguards and restrictions as the City Council may reasonably impose for the promotion and maintenance of the general welfare and health of the inhabitants of the community.
2. 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 of the effective Flood Insurance Rate Map. Where interpretation is needed 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 floodplain administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit their own technical evidence if so desired.
3. Compliance: No development located within known flood hazard areas of the community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
4. Abrogation and Greater Restrictions: It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
5. 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 statute.
6. 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 district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Plattsmouth or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

- C. Establishment of Zoning Districts: Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts - a floodway overlay district (FW) and flood fringe overlay district (FF) as identified in the Flood Insurance Study #31025CV000B dated

August 14, 2024 and accompanying FIRM panels as established in Section 5-7(B)(1). The flood fringe overlay district shall correspond to flood zones A, AE, A1-30, AH, AO, AR, A99, and floodway areas in Zone AE that are identified on FIRM panels. The floodway overlay district shall correspond to the floodway areas in Zone AE that are identified on the FIRM panels. Within these districts, all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

D. Floodplain Management Administration:

1. Designation of Floodplain Administrator: The Zoning Administrator of the City of Plattsmouth is hereby designated as the local floodplain administrator. The designated floodplain administrator shall, within three years of being designated, become a Certified Floodplain Administrator/Manager. If office of the Zoning Administrator is unfilled, the Mayor shall designate a City officer or such other person as the Mayor may deem qualified to assume the duties and responsibilities of floodplain administrator. Unless otherwise provided by the City Council, the Lower Platte South Natural Resources District shall assist the City of Plattsmouth on interpretation of floodplain/floodway rules and regulations. The floodplain administrator shall obtain comments from the NRD as part of his/her review of all proposed activity in this overlay district.
2. Permits Required: A floodplain development permit shall be required before any development, construction, or substantial improvement is undertaken. No person, firm, corporation, government agency, or other entity shall initiate any floodplain development without first obtaining floodplain development permit.
3. Duties of the Floodplain Administration: The floodplain administrator shall administer, implement, and enforce the provisions of this ordinance. The duties of the floodplain administrator shall include, but not be limited to:
  - a. Review, approve, or deny all applications for floodplain development permits;
  - b. Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied;
  - c. 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;
  - d. Review all subdivision applications and other proposed new development, including manufactured home parks and subdivision, to determine whether such proposals will be reasonable safe from flooding;
  - e. Notify adjacent communities and the Nebraska Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency;
  - f. Notify the Lower Platte South Natural Resources District Floodplain Management Section of any proposed construction and development activity in floodplain areas and/or upon land situated within the floodplain/floodway overlay zoning district;
  - g. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
  - 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;
  - i. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed;
  - j. Verify, record, and maintain record of all improved or damaged structures to ensure compliance with standards in this ordinance;
  - k. Track values of improvements and market value with permits;
  - l. Ensure consistent market value estimations to evaluate against damage or improved values;

- m. Ensure the comprehensive development plan as amended is consistent with this ordinance; and
  - n. 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 violations in accordance with this ordinance.
4. Application for Permit and Demonstration of Compliance.
- a. To obtain a floodplain development permit, the applicant shall first file an application, in writing, on a form furnished for that purpose. Every such application shall:
    - (1) Identify and describe the proposed development and estimated cost to be covered by the permit;
    - (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 work;
    - (3) Indicate the use or occupancy for which the proposed work is intended;
    - (4) Be accompanied by plans and specifications for the proposed construction;
    - (5) Be signed by the permittee or authorized agent who may be required to submit evidence to indicate such authority;
    - (6) If the proposed development is located entirely or partially within a flood plain, the applicant shall provide all information in sufficient detail and clarity to enable the floodplain administrator to determine that:
      - (a) All such proposals are consistent with the need to minimize flood damage;
      - (b) All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;
      - (c) Structures will be anchored to prevent flotation, collapse, or lateral movement;
      - (d) Construction materials are flood resistant;
      - (e) Appropriate practices to minimize flood damage have been utilized; and
      - (f) Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent entry of floodwaters.
    - (7) If the proposed development includes new and/or substantially improved structures, an elevation certificate based upon the finished construction certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator and be completed by a licensed surveyor, engineer, or architect;
    - (8) If floodproofing is proposed to be utilized for a structure, a floodproofing certificate completed by a licensed professional engineer or architect;
    - (9) If the development is proposed in the floodway, a no-rise certificate completed by a licensed professional engineer;
    - (10) If the proposed development will require a Letter of Map Revision (LOMR) or a Letter of Map Revision Based on Fill (LOMR-F), the information required in Section 5-7(D)(4)(b);
    - (11) If the proposed development will cause any of the following conditions, the information required in Section 5-7(D)(4)(c):
      - (a) A rise in the base flood elevations within the floodway; or
      - (b) Any development in Zones A, A1-30, and/or AE without a designated floodway that will cause a rise of more than one foot in the base flood elevation; or
      - (c) Alteration or relocation of a stream.

- (12) Provide such other information as reasonably may be required by the Zoning Administrator.
- b. Supplemental Information and Other Requirements for LOMR and LOMR-F Applications. Federal regulations in Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.5 and 65.6 allow for changes to the special flood hazard area through a Letter of Map Revision (LOMR) or a Letter of Map Revision Based on Fill (LOMR-F), provided the community determines that the land and any existing or proposed structures that would be removed from the floodplain are "reasonably safe from flooding." The community acknowledgement form asserting this is required for LOMR and LOMR-F applications and must be signed by the floodplain administrator. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:
  - (1) Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F;
  - (2) Applicant shall demonstrate that the property and any existing or proposed structures will be "reasonably safe from flooding," according to the minimum design standards in FEMA Technical Bulletin 10-01; and
  - (3) All requirements listed in the Simplified Approach in FEMA Technical Bulletin 10-01 shall be met and documentation from a registered professional engineer shall be provided. If all these requirements are not met, applicant must provide documentation in line with the Engineered Approach outlined in FEMA Technical Bulletin 10-01.
- c. Supplemental Information and Other Requirements for LOMR Applications. If the proposed development will cause any of the conditions listed in Section 5-7(D)(4)(a)(11), the applicant shall:
  - (1) Apply to FEMA for conditional approval of such action via the Conditional Letter of Map Revision process (as per Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.12) prior to the permit for the encroachments; and
  - (2) Supply the fully approved package to the floodplain administrator including any required notifications to potentially affected property owners.

5. Flood Data Required

- a. All areas identified as Zone A areas on the FIRM are subject to inundation of the base flood elevation; however, the base flood elevations are not provided. The Zone A areas shall be subject to all development provisions of this ordinance. If Flood Insurance Study 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. Further, in cases of proposed development within unnumbered A zones, the developer's engineer shall be required to conduct the necessary studies to determine the 100-year flood elevation and its extent in relation to such development.
- b. Until a floodway has been designated, no development, including landfill, 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 elevation more than one (1) foot at any location as shown in the Flood Insurance Study or on base flood elevation determinations.

E. Standards for Floodplain Development.

- 1. Permit Required. No permit for development shall be granted for new construction, substantial

improvement, or other improvements, including the placement of manufactured homes, within the identified floodplain unless the conditions of this section are satisfied.

2. Alteration or Relocation of a Watercourse.

- a. A watercourse or drainway shall not be altered or relocated in any way that in the event of a base flood or more frequent flood will alter the flood carrying characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations.
- b. No alteration or relocation shall be made until all adjacent communities that may be affected by such action and the Nebraska Department of Natural Resources have been notified and all applicable permits obtained. Evidence of such notification shall be submitted to the Federal Emergency Management Agency.

3. Design and Construction Standards.

- a. Anchoring. All buildings and structures shall be firmly anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including, the effects of buoyancy.
- b. Building Materials and utilities. All buildings and structures shall be constructed (1) with materials resistant to flood damage, utilizing methods and practices that minimize flood damages and (2) with electrical, heating, and ventilation that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- c. Drainage. Drainage. Within AH and AO zones, adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- d. Water Supply and Sanitary Sewer Systems.
  - (1) All new or replacement water supply systems and/or sanitary sewage systems shall be located, designed, and constructed to minimize or eliminate flood damages to such systems and the infiltration of floodwaters into the systems.
  - (2) All new or replacement sanitary sewage systems shall be designed to minimize or discharge from the systems into floodwaters.
  - (3) All on-site waste disposal systems shall be located so as to avoid impairment or contamination from them during flooding.
  - (4) New or replaced septic systems are prohibited in the Floodway and Flood Fringe Overlay Districts
- e. Utilities. All utility and sanitary facilities shall be elevated or floodproofed one foot above the regulatory flood elevation. Such floodproofing is permitted only for nonresidential properties.
- f. Storage of Materials 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 materials or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
- g. Recreational Vehicles. Recreational vehicles placed on sites within the floodplain and floodway shall either (1) be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, or (2) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. 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.

- h. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall conform to the following:
  - (1) All such proposals shall be consistent with the need to minimize flood damage;
  - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems, are located, elevated, and constructed to minimize or eliminate flood damage;
  - (3) Adequate drainage shall be provided so as to reduce exposure to flood hazards; and
  - (4) Proposals for development (including proposals for manufactured home parks and subdivisions) of five acres or 50 lots, whichever is less, shall be supported by hydrologic and hydraulic analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letters of Map Revision and a Letters of Map Revision.
  
- 4. Elevation and Floodproofing Requirements:
  - a. Residential Structures
    - (1) In Zones A, AE, A1-30, and AH, any new construction or substantial improvements of structures shall have the lowest floor, including basement, elevated one foot above the base flood elevation.
    - (2) In Zone AO, 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 FIRM or, if no depth number is specified on the FIRM, at least as high as three (3) feet.
    - (3) In the floodway, new structures for human habitation are prohibited.
  - b. Nonresidential Structures
    - (1) In Zones A, AE, A1-30, and AH, any new construction or substantial improvements of nonresidential structures shall:
      - (a) have the lowest floor, including basement, elevated one (1) foot above the base flood elevation or;
      - (b) together with attendant utility and sanitary facilities, shall be floodproofed so that anything below one (1) foot above the base flood elevation (a) the structure is watertight with walls substantially impermeable to the passage of water and (b) the structure has structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect 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 Zoning Administrator. A floodproofing certificate shall be provided to the Zoning Administrator as set forth in Section 5-7(D)(4)(a)(8).
    - (2) In Zone AO, all new construction and substantial improvements of nonresidential structures shall:
      - (a) 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, at least as high as three (3) feet; or
      - (b) together with attendant utility and sanitary facilities, floodproofed so that anything below one (1) foot above the base flood elevation (a) the structure is watertight with walls substantially impermeable to the passage of water and (B) the structure has structural components with 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. A floodproofing certificate shall be provided to the Zoning Administrator as set forth in Section 5-7(D)(4)(a)(8).

c. Space Below Floors

- (1) All fully enclosed areas below the lowest floor (excluding basements) and below the base flood elevation shall be used solely for the parking of vehicles, building access, or limited storage of readily removable items.
- (2) All fully enclosed areas below the lowest floor (excluding basements) and below the base flood elevation shall be designed to automatically equalize hydrostatic flood forces or 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;
  - (b) the bottom of all openings shall be not higher than one foot above grade; and
  - (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.

d. Manufactured Homes: Within any floodplain, manufactured homes shall be prohibited.

e. Accessory Structures. Accessory structures may have the lowest floor below one (1) foot above base flood elevation provided that the structure complies with this Section 5-7(E)(4)(e) and all other standards applicable to accessory structures in this ordinance.

- (1) The structure shall not be used for human habitation.
- (2) The use of the structure must be limited to parking of vehicles or storage of items readily removable in the event of a flood warning.
- (3) The floor area shall not exceed 800 square feet.
- (4) The structure shall have a low damage potential.
- (5) The structure must be adequately anchored to prevent flotation, collapse, or other lateral movement.
- (6) The structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
  - (a) a minimum of two openings having a net area of not less than one (1) square inch for every one (1) square foot of enclosed space;
  - (b) the bottom of all openings shall not be higher than one (1) foot above grade, and
  - (c) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.
- (7) No utilities shall be installed except electrical fixtures in the structure, which must be:
  - (a) elevated to or above one (1) foot above the base flood elevation; or
  - (b) floodproofed so that below one (1) foot above the base flood elevation they are: (i) watertight and substantially impermeable to the passage of water and (ii) capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this Section 5-7(E)(4)(e)(7) are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 5-7(D)(4)(a)(8);
  - (c) The structure shall be constructed and placed on the building site so as



- to offer the minimum resistance to the flow of floodwaters;
    - (d) If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.
  - f. **Agricultural Structures.** In lieu of the floodproofing standards for nonresidential structures set forth in Section 5-7(E)(4)(b), new construction and substantial improvement of agricultural structures located in the floodplain may comply with the floodproofing and other standards set forth in this Section 5-7(E)(4)(f).
    - (1) The agricultural structure shall have low damage potential (amount of physical damage, contents damage, and loss of function).
    - (2) The agricultural structure shall not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
    - (3) The agricultural structures shall utilize flood damage-resistant materials below the base flood elevation.
    - (4) The agricultural structure shall
      - (a) have mechanical, electrical, and utility equipment elevated to or above one (1) foot above the base flood elevation; or
      - (b) floodproofed so that below one (1) foot above the base flood elevation they are: (i) watertight and substantially impermeable to the passage of water and (ii) capable 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. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 5-7(D)(4)(a)(8).
    - (5) The agricultural structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
      - (a) minimum of two openings having a net area of not less than one (1) square inch for every one (1) square foot of enclosed space;
      - (b) the bottom of all openings shall not be higher than one (1) foot above grade, and
      - (c) (c) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.
    - (6) If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

F. **Floodway Overlay District:**

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 ordinance and provided that they do not require structures, fill, or storage of materials or equipment. These uses are subject to all the standards of Section 5-7(E)(3) and (4). The following are recommended uses for the Floodway Overlay District: (a) agricultural uses such as general farming, pasture, nurseries, and forestry; (b) residential uses such as lawns, gardens, parking, and play areas; (c) nonresidential uses such as loading areas, parking, and airport landing strips; and (d) public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, and wildlife and nature preserves.
2. No encroachments, including fill, new construction, substantial improvements, and other development shall be permitted within the floodway 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.

3. New structures, including manufactured homes, for human habitation shall be prohibited.
4. In Zone A areas, obtain, review, and reasonably utilize any floodway data available through federal, state, or local sources, including subdivisions under section 5-7(E)(3)(h) "Subdivisions", in meeting the standards of this section.

G. Request for Variances from Flood Fringe District and Floodway Overlay District Requirements:

1. The Board of Adjustment, as established by the City of Plattsmouth, shall hear and decide appeals and requests for variances from the requirements of this ordinance.
2. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the Zoning Administrator in the enforcement or administration of this Section.
3. At the time of application, the applicant for a variance shall be given a written notice over the signature of a community official that:
  - a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100 of insurance coverage, and
  - b. Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
4. In evaluating such appeals and requests, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance and:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger of life and property due to flooding or erosion damage;
  - 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 to the facility of a waterfront location, where applicable;
  - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - i. The safety of access to the property in time of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effect of wave action, if applicable, expected at the site; and
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. A variance from the terms of this Section 5-7 shall not be granted unless a written application is submitted demonstrating the facts and circumstances required in this Section 5-7(G)(5), in addition to the requirements of Section 12-10(B)(5), have been met by the applicant.
  - a. In addition to the application requirements set forth in Section 12-10, the application must also demonstrate that:
    - (1) good and sufficient cause exists to grant the variance;

- (2) failure to grant the variance would result in exceptional hardship to the applicant;
  - (3) the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
  - (4) the variance, if requested to be issued for the repair or rehabilitation of historic structures, will not include proposed repair or rehabilitation which would 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) the variance, if requested to be issued within any designated floodway, would not result in any increase in flood levels along the floodway profile during the base flood discharge ; and
  - (6) the variance is the minimum necessary, considering the flood hazard, to afford relief.
- b. Generally, variances may only be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level and which comply with all other requirements of this ordinance; provided, as lot size increases beyond one-half acre, the technical justification required for issuance the variance increases.
- c. The Board of Adjustment shall not grant a variance unless it makes the findings required by Section 12-10 and Nebraska law and makes the following findings in addition thereto:
- (1) good and sufficient cause exists to grant the variance;
  - (2) failure to grant the variance would result in exceptional hardship to the applicant;
  - (3) the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
  - (4) the variance, if requested to be issued for the repair or rehabilitation of historic structures, does not include proposed repair or rehabilitation which would 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) the variance, if requested to be issued within any designated floodway, will not result in any increase in flood levels along the floodway profile during the base flood discharge;
  - (6) the variance is the minimum necessary, considering the flood hazard, to afford relief; and
  - (7) where lot size is greater than one-half acre, the technical justification provided by the application is sufficient to warrant the variance.

H. Zoning Regulations for Nonconforming Uses:

- 1. Continuance of Nonconforming Uses: A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
  - a. No such use or substantial improvement of that use shall be extended, 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 ordinance. The Public Works Director or his/her designee shall notify the Building Inspector, in writing, of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.

- c. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue a nonconforming uses.
2. Replacement of Residential Uses: If any residential nonconforming use of a structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred within those areas identified as floodway (FW). 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.
3. Replacement of Nonresidential Uses: If any nonresidential nonconforming use of a structure is destroyed by any means, including flood, it should not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except if it is reconstructed in conformity with the provisions of this ordinance. 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.
- i. Definitions: Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.
  1. Area of Special Flood Hazard: The land in the floodplain within a community subject to 1 percent or greater chance of flooding in any given year.
  2. Base Flood means the flood having one (1) percent chance of being equaled or exceeded in any given year.
  3. Base Flood Elevation: Elevation indicated to which floodwaters are expected to rise during the base flood.
  4. Basement: as used in this Section 5-7, any area of the building having its floor subgrade (below ground level) on all sides.
  5. Channel: A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus, is that water which is flowing within the limits of a defined channel.
  6. Community: Any state or area or political subdivision thereof which has authority to adopt and enforce floodplain management regulations for the area within its jurisdiction.
  7. Development: As used in this Section 5-7, any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion or alteration of buildings or other structures; the placement of manufactured homes; streets or other paving; utilities; filling, grading, and excavation; mining; dredging; drilling operations; storage of equipment or materials; or obstructions.
  8. Existing Construction (For the Purposes of Determining Rates): Structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date. "Existing construction" may also be referred to as "existing

structures.”

9. Existing Manufactured Home Park or Subdivision: a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.
10. Expansion of 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).
11. Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters;
  - b. The unusual and rapid accumulation of runoff of surface waters from any source.
12. Flood Fringe: That area of the floodplain, outside of the floodway, that has a one percent chance of flood occurrence in any one year.
13. Flood Insurance Rate Map (FIRM): An official map of a community, on which the flood insurance study has delineated the flood hazard boundaries and the zones establishing insurance rates applicable to the community.
14. Flood Insurance Study: The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.
15. Floodplain (FP): Any land area susceptible to being inundated by water from any source (see definition of “flooding”). Floodplain includes flood fringe and floodway. Floodplain and special flood hazard area are the same for use by this ordinance.
16. Floodproofing: Any combination of structural and non-structural additions, changes, or adjustments to structures that would reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, and structures and their contents.
17. Floodway (FW): 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.
18. 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 heights 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.
19. Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
20. Historic Structure: means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National

Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

21. Letter of Map Revision (LOMR): Letter from FEMA officially revising the current National Flood Insurance Program (NFIP) map to show changes to floodplains, regulatory floodways, or flood elevations.
22. Letter of Map Revision Based on Fill (LOMR-F): FEMA modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.
23. 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 so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
24. Manufactured Home: As used in this Section 5-7, a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles
25. Manufactured Home Park or Subdivision: As used in this Section 5-7, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
26. National Flood Insurance Program (NFIP): Program created by U.S. Congress in 1968 through the National Flood Insurance Act of 1968. The NFIP has two purposes: to share the risk of flood losses through flood insurance and to reduce flood damages by restricting floodplain development.
27. New Construction: For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
28. 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.
29. Principally Above Ground: At least 51 percent of the actual cash value of the structure is above ground.
30. Recreational Vehicle: "Recreational Vehicle" shall mean a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal

projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporarily living quarters for recreational, camping, travel, or seasonal use.

31. Special Flood Hazard Area (SFHA): The land in the floodplain within a community subject to 1 percent or greater chance of flooding in any given year.
32. Start of Construction: For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L.97-348) includes substantial improvement, and means the date the building permit was issued, providing the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of street and/or walkways, nor does it include excavation for a basement, footings, or foundations or the erection of temporary forms, nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
33. Structure: As used in Section 5-7, 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.
34. Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
35. Substantial Improvement:
  - a. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
    - (1) Before the improvement or repair is started, or
    - (2) If the structure has been damaged and is being restored, before the damage occurred.
  - b. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:
    - (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
    - (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
36. Variance: is 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 unnecessary hardship.
37. Violation: means a failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the Elevation Certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

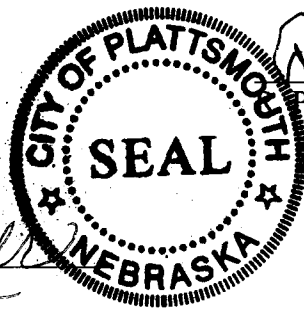
Section 2. All other ordinances approved prior to the passage, approval, and publication or posting of this ordinance which conflict with these provisions are repealed.


Section 3. This ordinance is adopted and published in pamphlet form and shall take effect August 14, 2024 and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this 17 day of June 2024.

ATTEST:

  
Sandra J. Meyer, City Clerk



  
Paul Lambert, Mayor

Publication Date: June 20, 2024.



**CITY OF PLATTSMOUTH  
NOTICE OF PUBLICATION OF  
ORDINANCE IN PAMPHLET FORM**

On the 17<sup>th</sup> day of June, 2024, the Mayor and City Council of the City of Plattsmouth, Nebraska adopted an ordinance entitled:

**ORDINANCE NO. 2017**

AN ORDINANCE TO AMEND SECTION 5-7 OF THE AUGUST 2006 LAND DEVELOPMENT ORDINANCE, FOR THE CITY OF PLATTSMOUTH, NEBRASKA RELATED TO THE FLOODPLAIN / FLOODWAY OVERLAY DISTRICT; TO REPEAL ALL ORDINANCES IN CONFLICT; TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM; AND TO PROVIDE AN EFFECTIVE DATE

Said Ordinance was published in pamphlet form and copies thereof are available at the office of the City Clerk, 136 North 5<sup>th</sup> Street, Plattsmouth, Nebraska.

/s/Sandra J. Meyer, City Clerk