

ORDINANCE NO. 2294

AN ORDINANCE AMENDING CHAPTER 28A OF THE LEXINGTON CITY CODE; TO REPEAL ORIGINAL CHAPTER 28A AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA AS FOLLOWS:

Section 1. That Chapter 28A of the Lexington City Code is hereby amended to read as follows:

CHAPTER 28A

FLOODPLAIN OVERLAY ZONING DISTRICT

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Article I. Statutory Authorization, Findings of Fact, Purpose

Sec. 28A-1.1 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application:

"Appeal" means a request for a review of the Chief Building Inspector's interpretation of any provision of this ordinance or a request for a variance.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Base Flood" means the flood having one percent chance of being equaled or exceeded in any given year.

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

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Existing Construction" means (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."

"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 complete before the effective date of the floodplain management regulations adopted by a community.

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).

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

"Flood Fringe" is that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

"Flood Insurance Rate Map (FIRM)" means 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.

"Flood Insurance Study" is 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.

"Floodplain" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Floodway" or "Regulatory Floodway" means 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 foot.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"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.

"Lowest floor" means 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.

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

"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.

"New Construction" For floodplain management purposes, "new construction" means 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.

"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.

"Overlay District" is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure is above ground.

"Recreational Vehicle" means 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 temporary living quarters for recreational, camping, travel, or seasonal use.

"Special Flood Hazard Area" is the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

"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, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

"Structure" means 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.

"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.

"Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a 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 violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variances" is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

"Violation" means a failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

Sec. 28A-1.2 Authorization

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

Sec. 28A-1.3 Flood Losses Resulting from Periodic Inundation

The flood hazard areas of Lexington, Nebraska, are subject to inundation which results in loss of

life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

Sec. 28A-1.4 General Causes

These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

Sec. 28A-1.5 Methods Used to Analyze Flood Hazards

This ordinance uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

- (1) Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this ordinance. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated May 3, 2011 as amended.
- (2) Calculation of water surface profiles based on a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.
- (3) Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.
- (4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.
- (5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.

Sec. 28A-1.6 Statement of 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 1.21 by applying the provisions of this ordinance to:

- (1) 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.
- (2) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- (3) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

- (4) Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

Article II. General Provisions

Sec. 28A-2.1 Lands to Which Ordinance Applies

This ordinance shall apply to all lands within the zoning jurisdiction of the City of Lexington, Nebraska identified on the Flood Insurance Rate Map (FIRM) dated May 3, 2011, as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 4.0 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon the issuance of a floodplain permit to develop, granted by the City Manager or his/hers duly designated representative under such safeguards and restrictions as the City Manager or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 5.0, 6.0, and 7.0.

Sec. 28A-2.2 Enforcement Officer

The City Manager of the community is hereby designated as the community's duly designated Enforcement Officer under this Ordinance.

Sec. 28A-2.3 Rules for Interpretation of District Boundaries

The boundaries of the floodway and flood fringe overlay districts shall be determined by scaling distances on the official zoning map or on the Flood Insurance Rate Map or Floodway 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 Enforcement Officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board of Adjustment and to submit his own technical evidence, if he so desires.

Sec. 28A-2.4 Compliance

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

Sec. 28A-2.5 Abrogation and Greater Restrictions

It is not intended by this ordinance to repeal, abrogate or impair any existent 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.

Sec. 28A-2.6 Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

Sec. 28A-2.7 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 on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This 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 damage. This ordinance shall not create liability on the part of the City of Lexington, Nebraska or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Sec. 28A-2.8 Severability

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

Sec. 28A-2.9 Appeal

Where a request for a permit to develop or a variance is denied by the Enforcement Officer the applicant may apply for such permit or variance directly to the Board of Adjustment.

Article III. Development Permit

Sec. 28A-3.1 Permit Required

No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in Sec. 28A-1.1.

Sec. 28A-3.2 Administration

The City Manager is hereby appointed to administer and implement the provisions of this ordinance. Duties of the City Manager shall include, but not be limited to:

- (1) Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied.
- (2) 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.
- (3) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from

flooding.

- (4) 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.
- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (6) Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in special flood hazard areas.
- (7) Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which new or substantially improved structures have been floodproofed.
- (8) When floodproofing is utilized for a particular structure the City Manager shall be presented certification from a registered professional engineer or architect.

Sec. 28A-3.3 Application for Permit

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 development to be covered by the floodplain development 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 definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.
- (4) Be accompanied by plans and specifications for proposed construction.
- (5) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
- (6) Give such other information as reasonably may be required by the City Manager.

Article IV. Establishment of Zoning Districts

Sec. 28A-4.1 General

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 a flood fringe overlay district (FF) as identified in the Flood Insurance Study [and accompanying map(s)]. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

Article V. Standards for Floodplain Development

Sec. 28A-5.1 Permits Granted; Conditions

- (1) No permit for development shall be granted for new construction, substantial improvements and other development(s) including the placement of manufactured homes within all numbered and unnumbered A zones (including AE, AO, and AH zones) unless the conditions of this Section are satisfied.
- (2) All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of Article VI. 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.
- (3) Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown on the Flood Insurance Study.
- (4) New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
 - (a) Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - (b) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
 - (c) Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (d) All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation.
- (5) Storage of Material and Equipment: the storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.\
- (6) Subdivision proposals and other proposed new development, including manufactured home parks or

subdivisions, be required to assure that (a) all such proposals are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood hazards, and (d) proposals for development (including proposals for manufactured home parks and subdivision) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the base flood elevation.

Article VI. Flood Fringe Overlay District

Sec. 28A-6.1 Permitted Uses

Any use permitted in Article VII shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Article V are met.

Sec. 28A-6.2 Standards for the Flood Fringe Overlay District

- (1) Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above **one (1) foot** above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below that 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. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the 500-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet. The top of the floor of any basement area shall be no lower than five feet below the elevation of the base flood. The area surrounding the structure on all sides shall be filled to or above the elevation of the base flood, compacted with slopes protected by vegetative cover. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the City Manager as set forth in Sec. 28A-3.2(7).
- (2) Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above **one (1) foot** above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below that 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 certify that the standards of this subsection are satisfied. Such certification shall be provided to the City Manager as set forth in Sec. 28A-3.2(7).
- (3) Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage 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 minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices

provided that they permit the automatic entry and exit of floodwaters.

- (4) Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- (5) All manufactured homes shall be anchored to resist floatation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
 - (a) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;
 - (b) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
 - (c) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 - (d) Any additions to the manufactured home be similarly anchored.
- (6) Require that all manufactured homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
 - (a) Outside of a manufactured home park or subdivision,
 - (b) In a new manufactured home park or subdivision,
 - (c) In an expansion to an existing manufactured home park or subdivision, or
 - (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above **one (1) foot** above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 6.25A.
- (7) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of Section 6.25B be elevated so that either:
 - (a) The lowest floor of the manufactured home is at or above **one (1) foot** above the base flood elevation, or
 - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 6.25A.

- (8) Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) 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.

Article VII. Floodway Overlay District

Sec. 28A-7.1 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. The following are recommended uses for the Floodway District:

- (1) Agricultural uses such as general farming, pasture, nurseries, forestry.
- (2) Residential uses such as lawns, gardens, parking and play areas.
- (3) Non-residential areas such as loading areas, parking and airport landing strips.
- (4) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

Sec. 28A-7.2 Standards for the Floodway Overlay District

New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Article V and VI. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Sec. 28A-5.1(6)(d) of this ordinance, in meeting the standards of this section.

Article VIII. Variance Procedures

Sec. 28A-8.1 Procedures for Board of Adjustment

- (1) The Board of Adjustment 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 City Manager in the enforcement or administration of this ordinance.
- (3) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S. 1943 (For Counties); 19-912, R.R.S. 1943 (For Municipalities).

- (4) In passing upon such applications, 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 to 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;
 - (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 times of flood for ordinary and emergency vehicles;
 - 1. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
 - 2. 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.

Sec. 28A-8.2 Conditions for Variances

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (8.52-8.56 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary,

considering the flood hazard, to afford relief.

- (5) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (6) The applicant shall be given a written notice over the signature of a community official that (1) 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 (2) 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.

Article IX. Nonconforming Use

Sec. 28A-9.1 When Applicable

- (1) A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
 - (a) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the City Manager in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.
 - (b) Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
- (2) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that 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, provided that the alteration shall not preclude its continued designation.

Article X. Penalties for Violation

Sec. 28A-10.1 General

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City of Lexington, Nebraska or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

Article XI. Amendments

Sec. 28A-11.1 General

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Lexington, Nebraska. At least thirty (30) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Flood Plain Management Act.

Section 2. That Original Chapter 28A of the Lexington City Code, together with all ordinances or sections of ordinances in conflict herewith are hereby repealed.

Section 3. That this Ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 12th day of April, 2011.



Camela Berke
City Clerk

John Fagot
John Fagot, Mayor