



Community Development Department

DATE: May 14, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: Zoning Ordinance Text Amendment - Ordinance 6577

REQUEST:

The Community Development Department requests approval of Ordinance 6577 to amend Section 14-04-19 of the City Code of Ordinances (FP – Floodplain).

BACKGROUND INFORMATION:

Ordinance 6577 to amend Section 14-04-19 of the City Code of Ordinances (FP – Floodplain) relating to the Flood Insurance Rate Map (FIRM) effective date and requirements for manufactured home parks, enclosures, and substantial improvements. Ordinance 6577 would add additional definitions to avoid misinterpretation and clarify requirements, reduce the freeboard or elevation requirement for Pre-FIRM manufactured home parks or subdivisions from two feet above the Base Flood Elevation (BFE) to one foot above the BFE, and change the effective date of the Flood Insurance Rate Map (FIRM) to June 6, 2024. The FIRM is an official map of a community on which FEMA determines base flood elevation, flood zones and floodplain boundaries.

The City of Bismarck and its Extraterritorial Area (ETA) is a participating community in the National Floodplain Insurance Program (NFIP). Participation in the NFIP is a State requirement for communities in North Dakota. Communities that participate in the NFIP must adopt a local floodplain ordinance that meets or exceeds FEMA and State requirements. Any modifications made to the City's floodplain ordinance must be reviewed by the State Floodplain Insurance Program Coordinator and FEMA Floodplain Specialists for compliance with State and Federal requirements. The proposed changes outlined in the draft ordinance have been reviewed and approved by both the State and FEMA.

A stakeholder group comprised of industry professionals, including professional land surveyors, members of the Burleigh County Water Resource District and Burleigh County Planning, a representative of manufactured home communities, ND Department of Water Resources staff, members of the Bismarck Board of Adjustment and Bismarck Planning and Zoning Commission, and the Mayor was formed in May 2023. The stakeholder group met five times to review existing requirements, FEMA and State guidelines, and technical bulletins, and to suggest changes.

Amendments include additional definitions to avoid misinterpretation and clarify requirements,

reduce the freeboard or elevation requirement for Pre-FIRM manufactured home parks or subdivisions from two feet above the Base Flood Elevation (BFE) to one foot above the BFE, and change the effective date of the Flood Insurance Rate Map (FIRM) to June 6, 2024.

The attached staff report contains a complete review of the request, according to standards of the Comprehensive Plan, city ordinances, and other relevant law. Additionally, the staff report contains an overview of past public engagement prior to, and the results of the public hearing at the Planning and Zoning Commission meeting held on April 24, 2024.

RECOMMENDED CITY COMMISSION ACTION:

Consider the request for the zoning ordinance text amendment to amend Section 14-04-19 of the City Code of Ordinances (FP – Floodplain) relating to the Flood Insurance Rate Map (FIRM) effective date and requirements for manufactured home parks, enclosures, and substantial improvements and call for a public hearing on May 28, 2024.

STAFF CONTACT INFORMATION:

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Daniel Nairn, Planning Manager, 701-355-1854, dnairn@bismarcknd.gov
Jenny Wollmuth, Senior Planner, 701-355-1850, jwollmuth@bismarcknd.gov

ATTACHMENTS:

1. Zoning Ordinance Text Amendment

STAFF REPORT

Application for: **Zoning Ordinance Text
Amendment**

Project ID: **ZOTA2023-004**

Project Summary

<i>Title:</i>	Revisions to FP – Floodplain District
<i>Status:</i>	Board of City Commissioners - Consideration
<i>Project Contact:</i>	Jenny Wollmuth, AICP, CFM
<i>Request:</i>	Amend Section 14-04-19 of the City Code of Ordinances (FP – Floodplain) relating to the Flood Insurance Rate Map (FIRM) effective date and requirements for manufactured home parks, enclosures, and substantial improvements.
<i>Staff Recommendation:</i>	Call for public hearing

Project Narrative

The Community Development Department requests approval of amendments to Section 14-04-19 of the City Code of Ordinances (FP – Floodplain). The proposed amendments would add additional definitions to avoid misinterpretation and clarify requirements, reduce the freeboard or elevation requirement for Pre-FIRM manufactured home parks or subdivisions from two feet above the Base Flood Elevation (BFE) to one foot above the BFE, and change the effective date of the Flood Insurance Rate Map (FIRM) to June 6, 2024. The FIRM is an official map of a community on which FEMA determines base flood elevation, flood zones and floodplain boundaries.

The Planning and Zoning Commission held a public hearing on this request on April 24, 2024. No written comments were received; however, one resident spoke at the hearing regarding their concerns with stormwater drainage in southeast Bismarck, specifically within Colonial Estates manufactured home park. At the conclusion of the public hearing, the Planning and Zoning Commission voted unanimously to approve this request.

National Flood Insurance Program and Community Rating System

The City of Bismarck and its Extraterritorial Area (ETA) is a participating community in the National Floodplain Insurance Program (NFIP). Participation in the NFIP is a State requirement for communities in North Dakota. Communities that participate in the NFIP must adopt a local floodplain ordinance that meets or exceeds FEMA and State requirements. Any modifications made to the City's floodplain ordinance must be reviewed by the State Floodplain Insurance Program Coordinator and FEMA Floodplain Specialists for compliance with State and Federal requirements. The proposed changes outlined in the draft ordinance have been reviewed and approved by both the State and FEMA.

The City of Bismarck and its ETA are also a participating community in the Community Rating System (CRS). The CRS is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. As a result, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the City of Bismarck meeting the goals of the CRS program. Currently, flood

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insurance policy holders are eligible for up to a 15% discount in their premium given our CRS status of Class 7.

The current Class 7 CRS classification is largely due to the existing two foot freeboard or elevation requirement for structures. This requirement was added to the ordinance in 2010, after the 2009 ice dam flooding event, to provide additional protection for any future flooding events caused by ice damming on the Missouri River.

FEMA modeling for FIRMs does not take ice damming into consideration as this type of flooding is challenging to predict. Flood waters may rise more rapidly giving less time to protect structures and may cause flooding that is above and beyond the FEMA model.

Staff has been assured that no change to this discount or class rating would occur if the ordinance is adopted as proposed.

Sources of Information

A stakeholder group comprised of industry professionals, including professional land surveyors, members of the Burleigh County Water Resource District and Burleigh County Planning, a representative of manufactured home communities, ND Department of Water Resources staff, members of the Bismarck Board of Adjustment and Bismarck Planning and Zoning Commission, and the Mayor was formed in May 2023.

The stakeholder group met five times to review existing requirements, FEMA and State guidelines, and technical bulletins, and to suggest changes.

Proposed Changes

At the request of FEMA and the ND Department of Water Resources, a citation of statutory authority referencing Chapters 40-47, 11-33, and 58-03 of the ND Century Code was added to

delegate responsibility to the City to adopt regulations designed to promote public health, safety and general welfare of its citizen. While this language is used and referenced in Title 14, FEMA and the State requested it be specifically added to the FP – Floodplain district regulations. Other amendments include:

- Definitions for enclosures, existing manufactured home park or subdivision, expansion to an existing manufactured home park or subdivision, new manufactured home park or subdivision and violation.
- Clarifying language to the definition of substantial improvement explaining that any repair, reconstruction, or improvement of a structure that occurs within a consecutive two-year period would be a substantial improvement if the repair, reconstruction, or improvement exceeds 50% of the value of the structure.
- Technical requirements to allow enclosures below the BFE based on certain conditions.
- Reference to the effective date of the FIRM, which is June 6, 2024.
- Reducing the freeboard or elevation requirement for Pre-FIRM manufactured home parks or subdivisions from two feet above the BFE to one foot above the BFE.

The stakeholder group was asked specifically if they were in favor of reducing the elevation requirement for all new construction and substantial improvements from two feet to one foot above the BFE. The stakeholder group was not in favor of this reduction for the following reasons:

- The two foot freeboard or elevation requirement provides long-term protection for homeowners. With new flood insurance

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rate mapping efforts, flood modeling can change the Special Flood Hazard Area (SFHA) impact based on a variety of factors including the changing characteristics of the Missouri River.

- Burleigh County is in the process of updating its floodplain ordinance. Burleigh County Planning Commission continues to recommend a two foot freeboard standard. It has been suggested that Burleigh County and Bismarck floodplain ordinances try to be as consistent as possible. This would be the case, for a significant regulatory portion of the ordinance, if both the City and the County maintain the two foot freeboard standard.
- By maintaining a two foot freeboard or elevation requirement, homeowners carrying flood insurance will continue to experience the 15% discount.

Public Engagement

Public engagement at the City Commission level will commence if the Board of City Commissioners calls for a public hearing. A stakeholder committee met on five occasions to draft, review and offer suggested changes to the draft ordinance.

At the Planning and Zoning Commission level, the public was duly notified of this request. A notice was published in the Bismarck Tribune on April 12 and April 19, 2024.

Staff received no written comments prior to the public hearing at the Planning and Zoning Commission. Any public comments received prior to the public hearing at the Board of City Commissioners will be summarized in the staff report.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Zoning Text Amendment

The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))

Yes. The following objectives of the plan would be advanced through the proposed amendment.

Objective I6(b) states:

“Participate actively in the National Flood Insurance Program and the Community Rating System to manage designated floodplains”

The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance ([Goal S9-e](#), [G10-g](#))

Yes. Amendments to this section of the zoning ordinance have been made regularly in the past for various reasons including clarification purposes and to reflect the most recent FIS and FIRM completed for the community in 2015. Conditions have changed since this time period, which justify the proposed revision. In particular, a new FIS and FIRM for the community was recently completed. These documents must be adopted prior to June 6, 2024.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; [NDCC 40-27-03](#))

Yes. The proposed zoning text amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

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The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance ([Goal G10](#))

Yes. All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning ordinance text amendment have been reviewed and corrected, as needed. Additional definitions for enclosure, existing manufactured home park or subdivision, expansion to an existing manufactured home park or subdivision, new manufactured home park or subdivision and violation have been added along with clarifications for flood hazard reduction to avoid misinterpretation and clarify requirements.

Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Community Development

Department, on behalf of the Planning and Zoning Commission. A preliminary draft is attached to this report for consideration by the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment ([Goal S10-a](#))

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning text amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends calling for a public hearing for the amendments to Section 14-04-19 of the City Code of Ordinances (FP – Floodplain district) as outlined in the draft zoning ordinance text amendment.

Attachments

1. Draft zoning ordinance text amendment

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
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CITY OF BISMARCK

ORDINANCE NO. 6577

First Reading
Second Reading
Final Passage and Adoption
Publication Date

AN ORDINANCE TO AMEND 14-04-19 OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO REGULATIONS FOR PROPERTIES LOCATED WITHIN THE FP – FLOODPLAIN ZONING DISTRICT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. Section 14-04-19 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to regulations for properties located within the FP – Floodplain , his hereby enacted to read as follows:

14-04-19. FP Floodplain District. In any FP floodplain district, the following regulations shall apply:

1. The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

2. Statement of purpose. It is the purpose of this section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding, generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;

- e. To minimize damage to public facilities and utilities located in special flood hazard areas such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges;
 - f. To help maintain a stable tax base by providing for the use and development of special flood hazard areas so as to minimize future flood blight areas;
 - g. To ensure that potential buyers are notified that property is located in a special flood hazard area;
 - h. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions; and
 - i. To provide an increased level of protection in anticipation of future increases in the base flood elevation (BFE).
3. Methods of reducing flood losses. In order to accomplish its purposes, this section includes methods and provisions for:
- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood water elevations or flow velocities;
 - b. Requiring that uses vulnerable to flooding, including attendant utilities and facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or convey flood waters;
 - d. Controlling filling, grading, dredging, and other development which may increase flood damage; and
 - e. Preventing or regulating the construction of flood barriers or obstructions which will unnaturally divert flood waters or which may increase flood hazards in other areas.
4. Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

“Accessory Structure” for floodplain management purposes means structures that are on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. Accessory structures are a single-story structure that may

only be used for parking or storage, represent a minimal investment by owners, and have low damage potential. Structures that include the following uses are not considered accessory structures for floodplain management purposes: habitable spaces, bathrooms, toilet rooms, laundry facilities, and entertainment and recreational spaces including but not limited to workshops and game rooms.

"Agricultural Structure" for floodplain management purposes means structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock.

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this section or a request for a variance.

"Attendant utilities and equipment" means utilities, electrical, plumbing, heating, ventilation, and air conditioning equipment, as well as facilities and services associated with new construction.

"Base flood or 100-year flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

"Base flood elevation (BFE)" means the height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by the storm water management plan prepared for the area in which the property is located.

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

"Best available data (BAD)" means water elevation information from any source used to estimate or determine the base flood elevation (i.e., high water mark).

"Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given location that determines the flow-carrying capacity at that location.

"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 located within the special flood hazard area.

"Enclosure" means enclosed walled in areas below the lowest floor of an elevated building that are constructed of flood-resistant materials and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters.

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"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).

"Fill" means materials such as soil, gravel, or crushed stone that is placed in an area and increases the ground elevation, whether or not that was the intention.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM)" means the official map issued by the Federal Emergency Management Agency (FEMA) where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

"Flood insurance study (FIS)" means the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the flood insurance rate map (FIRM), and the water surface elevation of the base flood.

"Floodplain or flood-prone area" means any land area susceptible to partial or complete inundation by water from any source.

"Floodplain Administrator" means the person designated by the Director of Community Development to administer and enforce the City's floodplain regulations.

"Floodproofing (dry)" means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight to two (2) feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

"Floodproofing (wet)" means the use of flood damage resistant materials and construction techniques to minimize flood damage to structures by intentionally allowing floodwater to enter and exit automatically (without human intervention) to minimize unequal

pressure of water on walls (hydrostatic load or pressure). Wet floodproofing also requires structures to be anchored to resist flooding, have mechanical and utility equipment elevated or protected, and have flood openings installed in walls.

"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 (1) foot.

"Letter of map amendment (LOMA)" means an official amendment to the currently effective flood insurance rate map (FIRM) which establishes that a property is not located in a special flood hazard area. A letter of map amendment (LOMA) is issued by FEMA.

"Letter of map revision (LOMR)" means an official amendment to the currently effective flood insurance rate map (FIRM) which is issued by FEMA and changes flood zones, delineations and elevations. A letter of map revision based on fill (LOMR(f)) is a LOMR issued by FEMA based on the placement of fill.

"Lowest floor" means the lowest floor of a structure including the basement and/or crawl space.

"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 connected to the required utilities. The term "manufactured home" does not include a recreational vehicle, but does include a mobile home.

"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" means structures for which the "start of construction" commenced on or after the effective date of this section.

"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.

"Non-conversion agreement" means an agreement signed by applicants and property owners, affirming that the owners agree not to convert or modify in any manner that is inconsistent with approved permit (and variance conditions, when applicable).

"Non-residential" means any building or structure or portion thereof that is not classified as residential.

"Pre-FIRM Building" means a building for which construction or substantial improvement occurred on or before ~~December 31, 1974~~ September 18, 1985, or before the effective date of an the initial Flood Insurance Rate Map (FIRM).

"Principal structure" for floodplain management purposes means a structure that is not an accessory structure. All principal structures must be constructed in accordance with the requirements applicable to residential construction or nonresidential construction as determined by the use of the structure.

"Post-FIRM Building" means a building for which construction or substantial improvement occurred after ~~December 31, 1974~~ September 18, 1985, or before the effective date of an the initial Flood Insurance Rate Map (FIRM), whichever is later.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational vehicle" means a vehicle which is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal projection; designated to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal uses. Recreational vehicles include, but are not limited to, travel trailers, trailers on wheels, park-model trailers and other similar vehicles.

"Residential" means:

- a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
- b. Residential structures, including but not limited to one and two-family dwellings, multifamily dwellings, group dwellings, bed and breakfast facilities, hotels and motels; and
- c. Institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, nursing homes, group homes, congregate care facilities, hospitals, medical centers, jails and detention centers.

"Special flood hazard area (SFHA)" means an area of land that would be inundated by a flood having a one percent (1%) chance of being equaled or exceeded in any given year (100-year flood).

"Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (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.

"Storage tank" means any closed vessel used to store gases or liquids.

"Storm water management plan" means a document prepared in accordance with the provisions of Title 14.1 of the City Code of Ordinances to evaluate surface water runoff and flood risks within a development, plat or watershed; to document special flood hazard areas; and to determine the systems required to convey or control flood flows within and through the area.

"Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value as assessed of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, that occurs within a consecutive two (2) year period. ~~‡~~The cost of which equals or exceeds fifty percent (50%) of the market value as assessed of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. For the purposes 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: 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 any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this section which permits construction in a manner that would otherwise be prohibited by this section.

"Violation" means the failure of a structure or other development to be fully compliant with the floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

5. General provisions.

- a. Jurisdiction. This section shall apply to all special flood hazard areas within the jurisdiction of the City of Bismarck, including all lands within the corporate limits of the City of Bismarck and the extraterritorial jurisdiction as provided for in Section 40-47-01.1 of the North Dakota Century Code, including areas specifically included in the jurisdiction of the City of Bismarck through agreement as approved by the Board of City Commissioners.
- b. Basis for establishing the special flood hazard areas. The special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report titled "The Flood Insurance Study for Burleigh County, North Dakota and Incorporated Areas", dated August 4, 2014, June 6, 2024 with an accompanying flood insurance rate map (FIRM), and as subsequently updated by any Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) and/or Letter of Map Revision Based on Fill (LOMR(f)) issued by the Federal Emergency Management Agency (FEMA), is hereby adopted by reference and declared to be a part of this section. The Flood Insurance Study (FIS) is on file in the office of the Floodplain Administrator. Special flood hazard areas may also be designated in a storm water management plan prepared for a development, plat or watershed.
- c. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations, unless a valid building permit was in place prior to July 27, 2010, except as provided for in subsection 6(b)(5) 7(b)(iii) (additions to existing structures).
- d. Greater restrictions. This section is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this section and another section of the City Code of Ordinances, an easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

- e. Interpretation. In the interpretation and application of this section, all provisions shall be:
- 1i. Considered as minimum requirements;
 - 2ii. Liberally construed in favor of the City of Bismarck; and
 - 3iii. Deemed neither to limit nor repeal any other powers granted to the City under the North Dakota Century Code or the Home Rule Charter for the City of Bismarck.
- f. Warning and disclaimer of liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Bismarck, any officer or employee thereof, or the Federal Emergency Management Agency (FEMA) for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.
- g. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.
- h. g. h. Letter of Map Revision (LOMR) and Letter of Map Revision based on Fill (LOMR-F). Development on any parcel for which a Letter of Map Revision (LOMR) or Letter of Map Revision based on Fill (LOMR-F) has been issued shall comply with all of the requirements and recommendations as contained therein. Development on any parcel for which a LOMR or Letter of Map Revision based on Fill (LOMR-F) has been issued shall be constructed in accordance with the provisions of FEMA Technical Bulletin 10-01.
- i. h. i. Non-conforming Status. Any structure constructed with the lowest floor elevated as required by the regulations in effect at the time of construction shall be considered a non-conforming structure for the purposes of this section, provided the lowest floor of said structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation.

6. Administration.

- a. Establishment of a development permit. A development permit shall be obtained before construction or development begins within any special flood hazard area established in subsection ~~4(b)~~ 5(b) (basis for establishing the special flood hazard areas). Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- 1.i. Elevation in relation to mean sea level (NAVD88), of the lowest floor (including basements and/or crawl spaces) of all structures;
- 2.ii. Elevation in relation to mean sea level (NAVD88) to which any structure has been floodproofed;
- 3.iii. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in subsection ~~6(b)(2)~~ 7(b)(ii) (nonresidential construction); and
- 4.iv. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

- b. Establishment of a non-structural development permit. A non-structural development permit shall be obtained before any land disturbing activity begins within any special flood hazard area established in subsection ~~4(b)~~ 5(b) (basis for establishing the special flood hazard areas). Application for a non-structural development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; proposed elevations upon completion of the land disturbing activity; the type of fill being used, if fill is proposed; and a description of the extent to which any watercourse will be altered or relocated as a result of proposed land disturbing activity.
- c. Administration by the Floodplain Administrator. The Floodplain Administrator, as defined herein, shall administer and implement this section by granting or denying

development permit and non-structural development permit applications in accordance with its provisions.

- d. Duties and Responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

1.i. Permit application review.

a. Review all development permit applications and non-structural development permit applications to determine that the permit requirements of this section have been satisfied.

b. Review all development permit applications and non-structural development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

c. Review all development permit applications and non-structural development permit applications to determine if the proposed development or land disturbing activity is located in the floodway. If located in the floodway, assure that the encroachment provisions of this section are met.

2.ii. Use of other base flood data. When base flood elevation data has not been provided in accordance with subsection **4(b) 5(b)** (basis for establishing the special flood hazard areas), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available (known as best available data (BAD)) from a federal, state or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with subsection **6(b)7(b)** (specific standards).

3.ii. Information to be obtained and maintained.

a. Obtain and record the actual elevation (in relation to mean sea level in NAVD88) of the lowest floor (including basement and/or

crawl space) of all new or substantially improved structures, and whether or not the structure contains a basement and/or crawl space.

b. For all new or substantially improved floodproofed structures:

i. Obtain and record the actual elevation (in relation to mean sea level in NAVD88) to which the structure has been floodproofed; and

ii. Maintain the floodproofing certifications required in subsection ~~5(a)(3)~~ 6(a)(iii).

c. Maintain for public inspection all records pertaining to the provisions of this section.

~~4~~ iv.

Alteration of watercourses. The Floodplain Administrator shall:

a. Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and

c. Notify the appropriate water resource district prior to removal or placement of fill within two hundred (200) feet of the ordinary high water mark of a body of water during normal flow or stage.

~~5~~ v.

Interpretation of flood insurance rate map (FIRM) or Digital flood insurance rate map (DFIRM) boundaries. Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of

the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection **7 8** (variance procedure). The Floodplain Administrator may require information be submitted by a registered land surveyor.

7. Provisions for flood hazard reduction.

- a. General standards. In all special flood hazard areas, the following standards are required:

1i.

Anchoring.

- a. All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- b. All manufactured homes must be elevated and anchored to resist flotation, collapse or and lateral movement of the structure. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors as referenced in FEMA P-85 / 2009. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

2ii.

Construction materials and methods.

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and
- c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Such facilities shall be located in areas that have been elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation for residential **structures and manufactured homes. Construction.**

Such facilities shall be located in areas that have been elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation or in areas that have been floodproofed to at least two (2) feet above the base flood elevation for nonresidential construction.

3iii. Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- b. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters; and
- c. All new and replacement on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4iv. Subdivision proposals.

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;
 - b. All subdivision proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
 - d. Base flood elevation data shall be provided for all subdivision proposals and other proposed developments. Elevation data must be provided in NAVD88 for areas with a flood insurance rate map (FIRM) or other base flood elevation data in that datum.
- b. Specific standards. In all special flood hazard areas where base flood elevation data have been provided as set forth in subsection 4(b) (basis for establishing the special flood hazard areas) or subsection 5(d)(2) (use of other base flood data), the following provisions are required:

- i. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation.
- ii. Nonresidential construction. Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed to at least two (2) feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Floodplain Administrator as set forth in subsection ~~5(d)(3)~~ 6(d)(ii) (information to be obtained and maintained).
- iii. Manufactured homes.
 - a. Manufactured homes shall be anchored in accordance with subsection ~~6(a)(1)~~ 7(a)(i) (anchoring).
 - b. All manufactured homes or those to be substantially improved shall be on a permanent foundation, as referenced in FEMA P-85 / 2009, have the lowest floor bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation, and be securely

anchored to an adequately anchored foundation system. However, within a Pre-FIRM manufactured home park, a newly placed manufactured home or those to be substantially improved shall be on a permanent foundation, have the bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system.

iv. Recreational Vehicles.

- a. All recreational vehicles to be placed on a site must be on the site for less than 180 consecutive days; and be fully licensed and highway ready.

v. Enclosures. New construction and substantial improvements may have enclosures with areas below the base flood elevation, that are less than 300 square feet and usable solely for building access and utility service connections serving the building, if constructed in accordance with the following requirements:

- a. Must have structural and non-structural components constructed of flood damage resistant material. Flood damage resistant materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
- b. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;
- c. Must have mechanical, electrical, and utility equipment elevated at least two feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
- d. Prior to the issuance of a building permit, the property owner must submit a signed non-conversion agreement to the City of Bismarck.

The non-conversion agreement must be recorded with the Burleigh County Recorder.

vi. Attached garages, decks and landings providing primary access, and accessory buildings.

- a. Garages attached to any residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it is attached.
- b. Decks and landings providing access to the primary entrance of a residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it provides access.

vii. Accessory structures.

- a. Accessory structures defined within this section that are not greater than 600 square feet in area may be constructed with the lowest floor below the base flood elevation in accordance with the following wet floodproofing requirements:
 - i. Must be anchored to resist floatation, collapse and lateral movement.
 - ii. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
 - iii. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;

- iv. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
 - v. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.
- b. Accessory structures defined within this section that are greater than 600 square feet in area may be constructed with the lowest floor one foot above the base flood elevation in accordance with the following requirements.
 - i. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
 - ii. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.
- c. Accessory structures that are not enclosed and do not have more than one ridged wall may be constructed at grade in accordance with the following requirements.
 - i. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;

- ii. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
- iii. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

6viii. Additions to existing structures.

- a. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory structure that ~~is considered a post-FIRM building and~~ is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure, ~~provided the lowest floor of the existing structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory structure that is considered a pre-FIRM building and is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure.~~
- c. Floodways. Floodways are designated areas located within the special flood hazard areas established in subsection 4(b) (basis for establishing the special flood hazard areas). Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
 - i. ~~1.~~ Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not

result in any increase in flood levels during the occurrence of the base flood discharge.

- ii. **2.** If the preceding subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of subsection **6 7** (provisions for flood hazard reduction).

8. **8.** Variance procedure.

- a. Board of Adjustment. The Board of Adjustment, as established in Chapter 14-06 of the City Code of Ordinances (Board of Adjustment), shall hear and decide appeals and requests for variances from the requirements of this section.
- b. Appeals. An appeal may be filed by any person, firm, or corporation aggrieved, or by any governmental officer, department or board affected by any decision or determination made by the Floodplain Administrator in the enforcement or administration of this section, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).
- c. Variances. An application for a variance may be made by any person, firm, or corporation with a legal interest in the property for which the variance is being sought, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).
- d. In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:
 - i. **1.** The danger to life and property due to flooding or erosion damage;
 - ii. **2.** The danger that materials may be swept onto other lands to the injury of others;
 - iii. **3.** The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - iv. **4.** The importance of the services provided by the proposed facility to the community;

- v. ~~5.~~ The necessity to the facility of a waterfront location, where applicable;
 - vi. ~~6.~~ The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
 - vii. ~~7.~~ The compatibility of the proposed use with the existing and anticipated development;
 - viii. ~~8.~~ The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - ix. ~~9.~~ The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x. ~~10.~~ 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
 - xi. ~~11.~~ The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- e. Upon consideration of the factors in subsection ~~(78)(d)~~ and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of a variance as it deems necessary to further the purpose of this section.
- f. Conditions for variances.

~~i.1.~~ Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this subsection.

~~ii.2.~~ Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.

~~iii.3.~~ Variances shall only be issued upon a determination that the variance is the minimum

necessary, considering the flood hazard, to afford relief.

iv.4. Variances shall only be issued upon:

1. A showing of good and sufficient cause;
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 3. A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- g. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation lower than two (2) feet above the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- h. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances granted to the Federal Emergency Management Agency (FEMA) upon request.

9. Encroachment Analysis. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

10. 9. Penalties for Violations. Penalties for violation of this section shall be in accordance with the provisions of Chapter 14-05 (Enforcement) of the City Code of Ordinances. Nothing herein shall prevent the City of Bismarck from taking such other lawful action as is necessary to prevent or remedy any violation.

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Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication.