

## ~CHAPTER 31~

### FLOOD DAMAGE PREVENTION

#### Sections:

- 31.01. Definitions.
- 31.02. General Provisions.
- 31.03. Administration.
- 31.04. Provisions for Flood Hazard Reduction.
- 31.05. Repealer.

#### 31.01. Definitions.

##### 31.01.01. 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.

1. **Appeal** - a request for a review of the Building Official interpretation of any provisions of this ordinance or a request for a variance.
2. **Area of special flood hazard** - the land in the floodplain subject to a one percent or greater chance of flooding in any given year.
3. **Base flood** - the flood having a one percent chance of being equaled or exceeded in any given year.
4. **Development** - any manmade 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 area of special flood hazard.
5. **Existing manufactured home park or subdivision** –a manufactured home park 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) are completed before the effective date of this ordinance.

6. **Expansion to existing manufactured home park or subdivision**- the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
7. **Flood or flooding** - a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters and/or
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
8. **Flood Insurance Rate Map (FIRM)** - the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones.
9. **Flood Insurance Study** - the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary Floodway Map, and the water surface elevation of the base flood.
10. **Floodway** - 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.
11. **Lowest floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
12. **Manufactured home** - 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."

13. **New construction** - structures for which the "start of construction" commenced on or after the effective date of the original ordinance, and includes any subsequent improvements to such structures.
14. **New manufactured home park or subdivision** - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of these floodplain management regulations
15. **Recreational vehicle** - means a vehicle, which is:
  - a. Built on a single chassis;
  - b. 400 square feet or less when measured at the largest horizontal projections;
  - c. Designed to be self-propelled or permanently towable by a light duty truck; and
  - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
16. **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 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 that alteration affects the external dimensions of the building.
17. **Structure** - a walled and roofed building or manufactured home 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.

18. **Substantial improvement** - any reconstruction, rehabilitation, addition, or other
- a. Improvement of a structure, the cost of which equals or exceeds 50 percent of the
  - b. Market value of the structure before the "start of construction" of the improvement.
  - c. This term includes structures which have incurred "substantial damage," regardless
  - d. Of the actual repair work performed. The term does not, however, include either:
    - i. 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
    - ii. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."
19. **Variance** - a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

## **31.02. General Provisions.**

### **31.02.01. Lands to Which This Ordinance Applies.**

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Hot Springs

### **31.02.02. Basis for Establishing the Areas of Special Flood Hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for City of Hot Springs, December 18, 2007, with an accompanying Flood Insurance Rate Map (FIRM) Numbers 46047C0125C, 46047C0128C, 46047C0136C, and 46047C0137C, are hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study and FIRM are on file at City Hall, 303 N. River Street, Hot Springs, South Dakota 57747. Source: Ord. 981, 4/02; Ord. 1055, 10/07;

### **31.02.03. Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations.

### **31.02.04. Abrogation and Greater Restrictions.**

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

### **31.02.05. Interpretation.**

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

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

### **31.02.06. Warning and Disclaimer of Liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free

from flooding or flood damages. This ordinance shall not create liability on the part of the City of Hot Springs, any officer or employee of the Community thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

### **31.03. Administration.**

#### **31.03.01. Establishment of Development Permit.**

- A. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in 31.02.02.
- B. Application for a development permit shall be made on forms furnished by the Building Official and may include, but not be limited to:
- C. 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. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
  - 2. Elevation in relation to mean sea level to which any structure has been floodproofed;
  - 3. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in 31.04.02(B); and,
  - 4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- D. Where base flood elevations are utilized, all new construction, substantial improvements and other development must comply with requirements of 31.03.03(B), Use of Other Base Flood Data.

### 31.03.02. Administration.

The City of Hot Springs Building Official is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

### 31.03.03. Duties and Responsibilities.

Duties and responsibilities of the Building Official shall include, but not be limited to:

- A. Permit Review.
  - 1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied;
  - 2. Review all development permits to determine that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required.
  - 3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of 31.04.03(1) are met.
  
- B. Use of Other Base Flood Data.
  - 1. When base flood elevation data has not been provided in accordance with 31.02.02., *Basis For Establishing The Areas Of Special Flood Hazard*, the Building Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any Federal, State, or other source.
  - 2. Where base flood elevation data are utilized, all new construction, substantial improvements, or other development in Zone A are administered in accordance with 31.03.03(C), Information to be Obtained and Maintained and 31.04.02, Specific Standards.
  
- C. Information to be Obtained and Maintained.
  - 1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  - 2. For all new or substantially improved floodproofed structures:

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

(ii) Maintain the floodproofing certifications required in 31.03.01(C).

3. Maintain for public inspection all records pertaining to the provisions of this ordinance.

D. Alteration of Watercourses.

1. Notify adjacent communities and the South Dakota Department of Environment & Natural Resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

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

E. Interpretation of FIRM Boundaries.

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard (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 31.03.04(A).

31.03.04. Variance Procedure.

A. Appeal Board.

1. The Hot Springs Board of Adjustment, as established by the City of Hot Springs, shall hear and decide appeals and requests for variances from the requirements of this ordinance.

2. The Hot Springs Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Building Official in the enforcement of this ordinance.

3. Those aggrieved by the decision of the Hot Springs Board of Adjustment, or any taxpayer, may appeal such decisions to the South Dakota Circuit Court.



4. In passing upon such applications, the Hot Springs Board of Adjustment shall consider all technical evaluations, 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 owners;
  - 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 for the proposed use which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with the 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;
  - j. 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,
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.
5. Upon consideration of the factors of 31.03.04(A)(4) and the purposes of this ordinance, the Hot Springs Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

6. The Building Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency.

#### 31.03.05. Conditions for Variances.

- A. 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 (i - xi) in 31.03.04(A)(4) have been fully considered. As the lot size increases beyond one half acre, the technical justifications required for issuing the variance increases.
- B. 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 section.
  1. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  3. 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 expenses, create nuisances, cause fraud on or victimization of the public as identified in 31.03.04(A)(1) or conflict with existing local laws or ordinances.
- C. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.

### **31.04. Provisions for Flood Hazard Reduction.**

#### 31.04.01. General Standards.

In all areas of special flood hazard, the following standards are required:

1. Anchoring.
  1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
  2. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to use of over the top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Specific requirements may be:
    - (i) 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, with manufactured homes less than 50 feet long requiring one additional tie per side.
    - (ii) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
    - (iii) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
    - (iv) Any additions to the manufactured home be similarly anchored.
2. Construction Materials and Methods.
  1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  3. 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.

C. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
3. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

31.04.02. Specific Standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in *31.02.02., Basis For Establishing The Areas Of Special Flood Hazard* or *31.03.03(B), Use of Other Base Flood Data*, the following provisions are required:

A. Residential Construction.

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation.

B. Nonresidential Construction.

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
  - (i) Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
  - (iii) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in 31.03.03(C).

C. Openings in Enclosures below the Lowest Floor.

1. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that 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.
2. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one foot above grade;
  - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Manufactured Homes.

1. Manufactured homes shall be anchored in accordance with 31.04.01(A)(2).

2. All manufactured homes or those to be substantially improved shall conform to the following requirements:
  - (i) Require that manufactured homes that are placed or substantially improved on a site:
    - 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 elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - (ii) Require that manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions that are not subject to the provisions in (i) above be elevated so that either:
    - a. The lowest floor of the manufactured home is at or above the base flood elevation, or
    - b. The manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

E. Recreational Vehicles.

1. Require that recreational vehicles 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 elevation and anchoring requirements for manufactured homes.

### 31.04.03. Floodways.

Located within areas of special flood hazard established in 31.02.02 are areas designated as floodways. 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:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If 31.04.03(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of *31.04. Provisions For Flood Hazard Reduction*.

[Ord.1001, Eff. 10/9/03]