

ORDINANCE NO. 1491

AN ORDINANCE TO AMEND AND RE-ENACT CHAPTER 32
OF THE CODE OF THE CITY OF JAMESTOWN, NORTH DAKOTA,
PERTAINING TO FLOOD DAMAGE PREVENTION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JAMESTOWN, NORTH DAKOTA:

THAT Chapter 32 of the Code of the City of Jamestown, North Dakota, is hereby amended and re-enacted to read as follows:

ARTICLE I.

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION 32-1.1. Statutory Authorization.

The Legislature of the State of North Dakota has, in the North Dakota Century Code, Chapter 40-47, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city council of Jamestown, North Dakota, does ordain as follows.

SECTION 32-1.2. Findings of Fact.

- (a) The flood hazard areas of the city are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety and governmental welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

SECTION 32-1.3. Statement of Purpose.

It is the purpose of this chapter 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:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;

- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

SECTION 32-1.4. Methods of Reducing Flood Losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- (1) 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 or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Controlling filling, grading, dredging and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

ARTICLE II. DEFINITIONS.

SECTION 32-2. Definitions.

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

Appeal means a request for a review of the building inspector's interpretation of any provision of this chapter or a request for a variance.

Base flood means the flood having a one-percent 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.

Basement means any area of the 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 a base flood elevation (i.e. high water mark).

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

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 area of special flood hazard.

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

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

Flood insurance rate map (FIRM) means the official map of a community on which the Federal Emergency Management Agency has delineated the Special Flood Hazard Areas (SFHAs), the Base Flood Elevations (BFEs) and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, and the water surface elevation of the base flood, and identifies the floodway.

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

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.

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 floodproofing design requirements of this chapter.

Manufactured home means a structure that is transportable in one (1) or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than one hundred eighty (180) consecutive days.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) 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 chapter.

Reasonable 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:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
- (e) Travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.

Special Flood Hazard Area (SFHA) means an area having special flood, mudflow or flood-related erosion hazards and shown on a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM) Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE or V. For the purpose of determining Community Rating System (CRS) premium discounts, all AR and A99 zones are treated as non-SFHAs.

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 or 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.

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

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the damage occurred. 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:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

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

ARTICLE III. GENERAL PROVISIONS.

SECTION 32-3.1. Lands to Which This Chapter Applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city.

SECTION 32-3.2. Basis for Establishing 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 the City of Jamestown, dated June 7, 2017," is hereby adopted by reference and declared to be a part of this chapter.

The Flood Rate Map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at City Hall.

SECTION 32-3.3. Compliance.

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

SECTION 32-3.4. Abrogation and Greater Restrictions.

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

SECTION 32-3.5. Interpretation.

In the interpretation and application of this chapter, 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.

SECTION 32-3.6. Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter 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 causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**ARTICLE IV.
ADMINISTRATION.**

SECTION 32-4.1. Establishment of Development Permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 32-3.2. Application for a development permit shall be made on forms furnished by the building inspector 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, and

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 section 32-5.2(2);
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

SECTION 32-4.2. Building Inspector---Designated.

The building inspector is hereby appointed to administer and implement this chapter by granting or denying development permit application with its provisions.

SECTION 32-4.3. Same---Duties and Responsibilities.

Duties of the building inspector shall include, but not be limited to:

- (1) *Permit review.*
 - a. Review all development permits to determine that the permit requirements of this chapter have been satisfied.
 - b. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required.
 - c. 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 section 32-5.3 (1), are met.
- (2) *Use of other base flood data.* When base flood elevation data has not been provided in accordance with section 32-3.2, the building inspector shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source in order to administer section 32-5.2.
- (3) *Information to be obtained and maintained.*
 - a. 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.
 - b. For all new or substantially improved floodproofed structures:
 1. Verify and record the actual elevation (in relation to mean sea level), and
 2. Maintain the floodproofing certifications required in section 32-4.1 (3).
 - c. Maintain for public inspection all records pertaining to the provisions of this chapter.

- (4) *Alteration of watercourses.*
- a. Notify nearby communities, water resource district, and the North Dakota State Water Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - 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 feet of the bank of a body of water during normal flow or stage.
- (5) *Interpretation of FIRM boundaries.* Make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 32-4.4.

SECTION 32-4.4. Variance Procedure.

- (a) *Appeal board.*
- (1) The board of adjustment, as established by the city, shall hear and decide appeals and requests for variances from the requirements of this chapter.
 - (2) The 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 inspector in the enforcement or administration of this chapter.
 - (3) Those aggrieved by the decision of the board of adjustment, or any taxpayer, may institute a proper action at law.
 - (4) In passing upon such applications, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, 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, for the proposed use which are not subject to flooding or erosion damage;
 - 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;
 - 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, and streets and bridges.
- (5) 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 (a)(4) a. through k. of this section have been fully considered. As lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
 - (6) Upon consideration of the factors of paragraph (a) (4) of this section and the purposes of this chapter, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
 - (7) The building inspector shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (b) *Conditions for variances.*
- (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 section.
 - (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. 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 as identified in paragraph (a)(4) of this section or conflict with existing local laws or ordinances.
 - (5) 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 elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**ARTICLE V.
PROVISIONS FOR FLOOD HAZARD REDUCTION.**

SECTION 32-5.1. General Standards.

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

(1) *Anchoring.*

- a. All new construction and substantial improvements 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 lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) *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.
- 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.

(3) *Utilities.*

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

(4) *Subdivision proposals.*

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;
- b. All subdivision proposals shall have public 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 subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

SECTION 32-5.2. Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided, as set forth in section 32-3.2 or 32-4.3 (2), the following provisions are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation.
- (2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed to at least two feet above the base flood elevation, so that below the base flood level 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. 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. 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:
 1. A minimum of two (2) openings having a total net area of not less than one (1) square foot of enclosed area subject to flooding shall be provided;
 2. The bottom of all openings shall be no higher than one (1) foot above grade; and
 3. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - 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 official as set forth in section 32-4.3 (3) b.
- (3) *Manufactured homes.*
 - a. Manufactured homes shall be anchored in accordance with section 32-5.1 (1) a.
 - b. All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to at least one foot above the base flood elevation, and is securely anchored to an adequately anchored foundation system.

SECTION 32-5.3. Floodways.

Located within areas of special flood hazard, as established in section 32-3.2, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters 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 subparagraph (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V.

ATTEST:

Jeff Fuchs
City Administrator

APPROVED:

Katie Andersen
Mayor

Introduced by Council Member Gumke
Seconded by Council Member Brubakken
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Roll Call No. 6 showed: 5 ayes, 0 nays, 0 absent.