

TITLE IX – FLOOD CONTROL

CHAPTER 1

ADOPTION OF NATIONAL CODE

Section 9.1.1 Statutory Authorization

The city/town of Mount Vernon elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid act, provides that areas of the town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. The National Flood Insurance Program was broadened and modified with the passage of the Flood Disaster Protection Act of 1973 and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Program is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security.

Section 9.1.2 Findings of Fact

The flood hazard areas of Mount Vernon are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.

These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Section 9.1.3 Purpose

It is the purpose of this ordinance 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 to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- F. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- G. Insure that potential buyers are notified that property is in a flood area.

Section 9.1.4 Methods of Reducing Flood Losses

- A. In order to accomplish its purposes, this ordinance uses the following methods:
- B. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

- C. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- D. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- E. Control filling, grading, dredging and other development which may increase flood damage;
- F. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

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CHAPTER 2
GENERAL PROVISIONS

Section 9.2.1 Lands to which this Ordinance Applies

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of Mount Vernon.

Section 9.2.2 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 Mount Vernon," dated September 29, 2010, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

Section 9.2.3 Establishment of Development Permit

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

Section 9.2.4 Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

Section 9.2.5 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.

Section 9.2.6 Interpretation

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

- A. considered as minimum requirements;
- B. liberally construed in favor of the governing body; and
- C. deemed neither to limit nor repeal any other powers granted under State statutes.

Section 9.2.7 Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance 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 ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 9.2.8 SEVERABILITY

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected. (adopted revisions October 2010)

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CHAPTER 3

ADMINISTRATION

Section 9.3.1 Designation of the Floodplain Administrator

The Mount Vernon Municipal Finance Officer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

Section 9.3.2 DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- A. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- B. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- C. Review, approve or deny all applications for development permits required by adoption of this ordinance.
- D. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- E. Where interpretation is 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 Floodplain Administrator shall make the necessary interpretation.
- F. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota State Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- G. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- H. When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.
- I. 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 foot at any point within the community.
- J. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood

by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

Section 9.3.3 Permit Procedures

Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- A. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
- B. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
- C. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B(2);
- D. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- E. Maintain a record of all such information in accordance with Article 4, Section (B)(1).

Section 9.3.4 Approval or Denial of Development Permit

Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

- A. The danger to life and property due to flooding or erosion damage;
- B. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- C. The danger that materials may be swept onto other lands to the injury of others;
- D. The compatibility of the proposed use with existing and anticipated development;
- E. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- F. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- G. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- H. The necessity to the facility of a waterfront location, where applicable;
- I. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- J. The relationship of the proposed use to the comprehensive plan for that area.

Section 9.3.5 Variance Procedures

- A. The appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this ordinance.
- B. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

- C. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- D. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency and the State Office of Emergency Management upon issuing a variance.
- E. 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 ordinance.
- F. 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 the relevant factors in Section C(2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- G. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Article 1, Section C).
- H. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- I. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- J. Prerequisites for granting variances:
 - 1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - 2. Variances shall only be issued upon:
 - a. showing a 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, or conflict with existing local laws or ordinances.
 - 3. Any application 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 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.
- K. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - 1. the criteria outlined in Article 4, Section D(1)-(9) are met, and
 - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

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CHAPTER 4

PROVISIONS FOR FLOOD HAZARD REDUCTION

Section 9.4.1 General Standards

- A. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- B. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- C. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- D. All new construction or 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.
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- G. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Section 9.4.2 Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B(8), or (iii) Article 5, Section C(3), 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 one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C(1)a., is satisfied.
- B. Nonresidential Construction -new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

- C. Enclosures -new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
1. 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.
 2. The bottom of all openings shall be no higher than one foot above grade.
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Manufactured Homes

1. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, 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. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
3. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
 - a. the lowest floor of the manufactured home is at one foot above base flood elevation, or
 - b. the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- E. Recreational Vehicles -Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
1. be on the site for fewer than 180 consecutive days,
 2. be fully licensed and ready for highway use, or
 3. meet the permit requirements of Article 4, Section C(1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Section 9.4.3

Standards for Subdivision Proposals

- A. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this ordinance.
- B. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this ordinance.
- C. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B (8) of this ordinance.
- D. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- E. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Section 9.4.4

Standards for Areas of Shallow Flooding (AO/AH Zones)

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- A. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
- B. All new construction and substantial improvements of non-residential structures:
 - 1. have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;
 - 2. together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- C. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section C (1)a., are satisfied.
- D. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

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CHAPTER 5

PENALTIES FOR NONCOMPLIANCE

Section 9.5.1 Penalties

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. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than Two Hundred Dollars (\$200) or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Mount Vernon from taking such other lawful action as is necessary to prevent or remedy any violation.