

**CITY OF EGAN, COUNTY OF MOODY
STATE OF SOUTH DAKOTA
ORDINANCE #168**

FLOOD PREVENTION ORDINANCE

SECTION 1.0: STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of South Dakota has in the South Dakota Code of Laws delegated the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Trustees of the City of Egan, SD does ordain as follows:

1.2 FINDINGS OF FACT

- (1) The flood hazard areas of the City of Egan are subject to periodical inundation which results in loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are adequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 STATEMENT OF 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 to 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 mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

- (6) To help maintain a stable tax base by providing for the sound 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 hazard assume responsibility of their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance 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 flood waters.
- (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 flood waters or which may increase flood hazards in other areas.

SECTION 2.0: 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 to give this ordinance its most reasonable application.

“Area of special flood hazard” means the land in the floodplain subject to a one percent or greater chance of flooding in any given year.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

“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 of partial or complete inundation of normally dry land areas from:

- (1) the overflow of waters, and/or

- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means an official map of the community on which the Federal Emergency Management Agency has delineated areas of special flood hazard designated as Zone A.

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

"Structure" means a walled and roofed building or manufactured home that is principally above ground.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvements. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

SECTION 3.0: GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Egan.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map (FIRM) dated January 22, 1980 and subsequent revisions is adopted by reference and declared to be a part of this ordinance. The FIRM is on file at the Egan City Office, 101 N. Irvin, Egan, SD.

3.3 COMPLIANCE

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

3.4 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.

3.5 INTERPRETATION

In the interpretation 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 statute.

3.6 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 man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such 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 of the part of the City of Egan, any officer or employee 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.

SECTION 4.0: ADMINISTRATION

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 3.2.

Application for a development permit shall be made on forms furnished by the Finance Officer for the City of Egan 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.

Where base flood elevations are utilized, all new construction, substantial improvements and other development must comply with requirements of Section 4.3.2, Use of Other Base Flood Data.

4.2 DESIGNATION OF TRUSTEE #4 AS THE LOCAL ADMINISTRATOR

Trustee # 4 is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provision.

4.3 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

Duties of the Local Administrator (Trustee #4) shall include but not be limited to:

4.3-1 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 permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (3) Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purpose of this ordinance, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.
 - i. If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further consideration.
 - ii. If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer's certification) for the proposed development shall be required.
 - iii. If the proposed development is a building, then the provisions of this ordinance shall apply.

4.3-2 Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Local Administrator (Trustee #4) shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source. Where base flood elevation data are utilized, all new construction, substantial improvements, or other development in Zone A are administered in Accordance with Sections 4.3-3, Information to be Obtained and Maintained and 5.2, SPECIFIC STANDARDS.

4.3-3 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 Section 4.1.(3).

4.3-4 Alteration of Watercourses

- (1) Notify adjacent communities and the 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.
- (2) Require the maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.3-5 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 4.4.

4.4 VARIANCE PROCEDURE

4.4-1 Appeal Board

- (1) The Appeal Board (Board of Trustees) as established by the City of Egan, shall hear and decide appeals and request for variances from the requirements of this ordinance.
- (2) The Appeal Board (Board of Trustees) shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator (Trustee #4) in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the Appeal Board (Board of Trustees), or any taxpayer, may appeal such decisions to the Circuit Court as provided in State Statute.
- (4) In passing upon such applications, the Appeal Board (Board of Trustees) shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - (i) The danger that materials may be swept onto other lands to the injury to others:
 - (ii) the danger to life and property due to flooding or erosion damage;

- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with the existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) 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; and,
 - (xi) 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 Section 4.4-1(4) and the purposes of this ordinance, the Appeal Board (Board of Trustees) may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (6) The Local Administrator (Trustee #4) shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency and the SD Office of Emergency Management.

4.4-2 Conditions for Variances

- (1) Generally, variances may be issued for new construction and substantial Improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (I-xi) in Section 4.4-1(4) have been fully considered. AS the lot size increases beyond the one-half acre, the technical justifications required for issuing the variance increases.

- (2) 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.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause.
 - (ii) a determination that 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 Section 4.4-1(4) or conflict with existing local laws or ordinances.
- (6) 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 lowest floor elevation.

SECTION 5.0: PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

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

5.1-1 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 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 4800 pounds; and
- (iv) any additions to the manufactured home be similarly anchored.

5.1-2 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.

5.1-3 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) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.1-4 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, 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).

5.1-5 Encroachments

Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

5.2 SPECIFIC STANDARDS

In all areas of special flood hazard where base flood elevation data has been provided as set forth in Section 4.3-2, Use of Other Base Flood Date, the following standards are required:

5.2-1 Residential Construction

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

5.2-2 Nonresidential Construction

- (1) New construction and substantial improvements 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:
 - (a) be floodproofed so that below the base flood 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 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 Section 4.3-3(2).

SECTION 6.0: PENALTIES

Any person or entity violating the provisions of this ordinance will be subject to penalties provided for violation of other ordinances.



Tom Steinhauer, Chairman
Board of Trustees

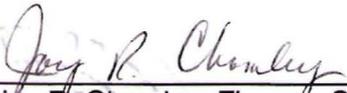
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ATTEST:



Joy R. Chamley, Finance Officer

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