

ORDINANCE NUMBER 2018-12

RESTRICTIVE FLOODPLAIN MANAGEMENT ORDINANCE

WHEREAS, the City of Fairmont has opted to participate and maintain eligibility in the National Flood Insurance Program which works to reduce the financial burden placed on property owners whose buildings are mapped into high-risk flood areas; and,

WHEREAS, participation in this program will allow residents in the flood hazard zone to qualify for flood insurance; and,

WHEREAS, this ordinance was reviewed by the Fairmont Planning Commission, the Fairmont City Council, and the Minnesota Department of Natural Resources.

NOW THEREFORE THE CITY OF FAIRMONT DOES HEREBY ORDAIN, that the City of Fairmont adopts the following:

ARTICLE XI: Floodplain Management Ordinance

Section 26-900. STATUTORY AUTHORIZATION AND PURPOSE.

(a) **Statutory Authorization:** The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

(b) **Purpose:**

- 1 This ordinance regulates development in the flood hazard areas of the City of Fairmont. These flood hazard areas are subject to periodic inundation, which may result in loss of life and 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. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
- 2 National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.
- 3 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

SECTION 26-901. GENERAL PROVISIONS.

- (a) **Lands to Which Ordinance Applies:** This ordinance applies to all lands within the jurisdiction of the City of Fairmont shown on the Flood Hazard Boundary and Flood Insurance Rate Maps adopted in Section 26-901 (b) as being located within the boundaries of the Floodplain District. The Floodplain District is an overlay district that is superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.
- (b) **Adoption of Flood Maps:** The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes the effective Flood Hazard Boundary and Flood Insurance Rate Maps enumerated below. These materials are on file in the office of the City Clerk, 100 Downtown Plaza, Fairmont, MN.
- FIA Flood Hazard Boundary Map, No. H 01 – dated December 12, 1975
 - FIA Flood Hazard Boundary Map, No. H 02 – dated December 12, 1975
 - FIA Flood Hazard Boundary Map, No. H 03 – dated December 12, 1975
 - FIA Flood Hazard Boundary Map, No. H 05 – dated December 12, 1975
 - Martin County Flood Insurance Rate Map, No. 22 – converted by letter September 1, 1988
 - Martin County Flood Insurance Rate Map, No. 23 – converted by letter September 1, 1988
 - Martin County Flood Insurance Rate Map, No. 28 – converted by letter September 1, 1988
 - Martin County Flood Insurance Rate Map, No. 29 – converted by letter September 1, 1988
- (c) **Interpretation:** The boundaries of the Floodplain District are determined by scaling distances on the Flood Hazard Boundary and Flood Insurance Rate Maps.
- 1 Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations must be the governing factor. The Community Development Director must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.
 - 2 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Board of Zoning Appeals and to submit technical evidence.
- (d) **Abrogation and Greater Restrictions:** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- (e) **Warning and Disclaimer of Liability:** This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or

flood damages. This ordinance does not create liability on the part of the City of Fairmont or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(f) **Severability:** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

(g) **Definitions:** Unless specifically defined below, words or phrases used in this ordinance must be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

- 1 Base Flood – the flood having a one percent chance of being equaled or exceeded in any given year.
- 2 Base Flood Elevation – The elevation of the “regional flood,” as defined. The term “base flood elevation” is used in the flood insurance survey.
- 3 Development – any man-made change to improved or unimproved real estate including, but not limited to, buildings, manufactured homes, and other structures, recreational vehicles, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of materials or equipment.
- 4 Farm Fence – A fence as defined by Minn. Statute §344.02 Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are not permitted in the Floodplain District.
- 5 Flood Fringe – the portion of the floodplain located outside of the floodway.
- 6 Flood Insurance Rate Map - An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- 7 Floodplain – the areas adjoining a watercourse which have been or hereafter may be covered by the regional flood.
- 8 Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.
- 9 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 the term “recreational vehicle.”
- 10 Obstruction – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence (with the exception of farm fences), stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

- 11 Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”
- 12 Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance / 100-year recurrence interval. Regional flood is synonymous with the term “base flood”.
- 13 Regulatory Flood Protection Elevation – an elevation no lower than three feet above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.
- 14 Structure – anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, and other similar items.
- 15 Substantial Damage - damage of any origin sustained by a structure where 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.
- 16 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, 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 improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:
 - a. 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.
 - b. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this ordinance, “historic structure” is as defined in 44 Code of Federal Regulations, Part 59.1.

(h) **Annexations:** The Flood Hazard Boundary and Flood Insurance Rate Map panels adopted by reference into Section 26-901 (b) above may include floodplain areas that lie outside of the corporate boundaries of the City of Fairmont at the time of adoption of this ordinance. If any of these floodplain areas are annexed into the city after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

SECTION 26-902. ESTABLISHMENT OF FLOODPLAIN DISTRICT.

(a) **Areas Included:** The Floodplain District for the City of Fairmont includes those areas designated as Zone A on the Flood Hazard Boundary and Flood Insurance Rate Maps adopted in Section 26-901 (b). The Floodplain District is an overlay district to all existing land use districts. The requirements of this ordinance apply in addition to other legally established regulations of the

community. Where this ordinance imposes greater restrictions, the provisions of this ordinance apply.

- (b) **Compliance:** No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations. Within the Floodplain District, all uses not listed as permitted uses in Section 26-903 are prohibited.

SECTION 26-903. PERMITTED USES AND STANDARDS IN THE FLOODPLAIN DISTRICT.

- (a) **Permitted Uses:** The following uses are permitted within the Floodplain District without a permit provided that they are allowed in any underlying zoning district and not prohibited by any other ordinance; and provided that they do not require structures, fill, obstructions, excavations, drilling operations, storage of materials or equipment or any other form of development as defined in Section 26-901 (g) of this ordinance. If the use does require any other form of development, a permit and compliance with Section 26-903 (b) of this ordinance is required. The permit requirement may be waived if there is an application for a public waters work permit from the Department of Natural Resources.

- 1 Agricultural uses such as general farming, pasture, grazing, forestry, sod farming, and wild crop harvesting. Farm fences that do not obstruct flood flows are permitted.
- 2 Outdoor plant nurseries and horticulture.
- 3 Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
- 4 Lawns, gardens, parking areas, and play areas.
- 5 Railroads, roads, bridges, utility transmission lines, pipelines and other public utilities, provided that the Department of Natural Resources is notified at least ten (10) days prior to issuance of any permit.

(b) **Standards for Permitted Uses:**

- 1 The use must have low flood damage potential.
- 2 The use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected. This provision applies to structures (temporary or permanent), fill (including fill for roads and levees), deposits, obstructions, storage of materials or equipment, and all other uses.
- 3 Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 4 Public utilities, roads, railroad tracks and bridges to be located within the floodplain must be designed in accordance with Sections 26-903 (b) 2 and 26-903 (b) 3 above, or must obtain a Conditional Letter of Map Revision meeting the requirements of 44 CFR 603(d).
 - a. When failure or interruption of these public facilities would result in danger to the public health or safety or where such facilities are essential to the orderly

functioning of the area, such facilities must be elevated to the regulatory flood protection elevation.

- b. Where failure or interruption of service would not endanger public health or safety, minor or auxiliary roads, railroads or utilities may be constructed at a lower elevation.
- 5 New or replacement water supply systems and sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

SECTION 26-904. ADMINISTRATION.

(a) **Community Development Director:** The Community Development Director or other official designated by the City Council must administer and enforce this ordinance.

(b) **Development Approvals:** Any construction, enlargement, alteration, repair, improvement, moving or demolition of any building or structure must comply with the requirements of this ordinance. No mining, dredging, filling, grading, paving, excavation, obstruction, drilling operation or other form of development as defined in Section 26-901 (g) of this ordinance are allowed, other than the uses identified in Section 26-903 (a) and the activities allowed under Section 26-905.

(c) **Permit Required.** A permit must be obtained from the Community Development Director prior to conducting the following activities:

- 1 Expansion, change, enlargement, or alteration of a nonconforming use as specified in Section 6 of this ordinance. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in Section 26-901 (g) of this ordinance.
- 2 Any use that requires fill, obstruction, excavation, storage of materials, or any other form of development as defined in Section 26-901 (g) of this ordinance.
- 3 Permit applications must be submitted to the Community Development Director on forms provided for that purpose and shall include the following where applicable: plans drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- 4 Prior to granting a permit, the Community Development Director must verify that the applicant has obtained all necessary state and federal permits.

(f) **Variances:**

- 1 An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes as well as Chapter 26, Article II, Division 5 of the Fairmont Zoning Code.
- 2 A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.

- 3 The following additional variance criteria of the Federal Emergency Management Agency must be met:
 - a. Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - b. Variances may only be issued by a community 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 expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 4 The Community Development Director must submit hearing notices for proposed variances to the Department of Natural Resources sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by email or U.S. Mail to the respective DNR area hydrologist.
- 5 A copy of all decisions granting variances must be forwarded to the Commissioner of the Department of Natural Resources within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- 6 The Community Development Director must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the base or regional flood level increases risks to life and property
- 7 The Community Development Director must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

(g) Notifications for Watercourse Alterations: Before authorizing any alteration or relocation of a river or stream, the Community Development Director must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statute, Sec.103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

(h) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations: As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Community Development Director must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

SECTION 26-905. NONCONFORMITIES.

(a) **Continuance of Nonconformities:** A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions.

- 1 A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its nonconformity. There shall be no expansion to the outside dimensions of any portion of a nonconforming structure located within the Floodplain District. Any expansion or enlargement of uses, structures, or occupancies within the Floodway District is prohibited.
- 2 If any structure experiences a substantial improvement as defined in this ordinance, then the entire structure must meet the standards of Section 26-904 or 26-905 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. If the current proposal, including maintenance and repair during the previous 365 days, plus the costs of any previous alterations and additions since the first Flood Hazard Boundary or Flood Insurance Rate Map (December 12, 1975) exceeds 50 percent of the market value of any nonconforming structure, the entire structure must meet the standards of Section 26-905 (b) of this ordinance.
- 3 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.
- 4 If any nonconformity is substantially damaged, as defined in Section 26-901 (g) of this ordinance, it may not be reconstructed unless it is located in the flood fringe portion of the floodplain and it is reconstructed in accordance with the standards of Section 26-905 (b) of this ordinance
- 5 Any substantial improvement, as defined in Section 26-901 (g) of this ordinance, to a nonconforming structure, then the existing nonconforming structure must be located in the flood fringe portion of the floodplain and meet the requirements of Section 26-905 (b) of this ordinance.

(b) **Standards for Reconstruction of Nonconforming Structures.** The following standards and procedures apply to nonconforming structures in the flood fringe portion of the floodplain, as allowed under Section 26-905 (a).

- 1 All structures, including manufactured homes, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation.
- 2 Fill must be properly compacted, and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.
- 3 Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 4 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and 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 or local anchoring requirements for resisting wind forces.

- 5 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
- 6 Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.
- 7 Record of First Floor Elevation. The Community Development Director must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations to existing structures in the floodplain. The Community Development Director must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.

SECTION 26-906. PENALTIES AND ENFORCEMENT.

- (a) **Violation Constitutes a Misdemeanor:** Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances) constitutes a misdemeanor and is punishable as defined by law.
- (b) **Other Lawful Action:** Nothing in this ordinance restricts the City of Fairmont from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Community Development Director within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.
- (c) **Enforcement:** In responding to a suspected ordinance violation, the Community Development Director and City Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

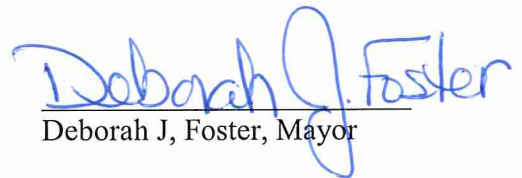
SECTION 26-907. AMENDMENTS.

- (a) **Floodplain Designation – Restrictions on Removal:** The floodplain designation on the Official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

- (b) **Amendments Require DNR and FEMA Approval:** All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner of the DNR must approve the amendment prior to community approval.
- (c) **Map Amendments Require Ordinance Amendments.** The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 26-901 (b) of this ordinance.

Motion by: Council Member Bruce Peters
Seconded by: Council Member Tom Hawkins
All in Favor: Council Members Tom Hawkins, Wayne Hasek, Bruce Peters, Jim Zarling and Ruth Cyphers
Opposed: None
Abstained: None
Absent: None

PASSED, APPROVED AND ADOPTED THIS 26th day of March 2018.


Deborah J, Foster, Mayor


Patricia J. Monsen, City Clerk

1st Reading: March 12, 2018
2nd Reading: March 26, 2018