

ORDINANCE NO. 28724

1 AN ORDINANCE to amend Sections 55-651 through 55-663 of the Omaha Municipal Code; to  
2 adopt new and more detailed digital flood hazard maps for the West Papillion Creek, Hell  
3 Creek and North Branch West Papillion Creek; in addition to updating the flood fringe  
4 and floodway overlay district regulations; to repeal Sections 55-651 through 55-663 as  
5 heretofore existing; and to provide the effective date thereof.

6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

7 Section 1. That Sec. 55-651 of the Omaha Municipal Code is hereby amended to read as  
8 follows:

9 **Sec. 55-651. FF flood fringe district and FW floodway districts.**  
10

11 Section 2. That Sec. 55-652 of the Omaha Municipal Code is hereby amended to read as  
12 follows:

13 **Sec. 55-652. Statutory authorization, findings of fact, and purposes.**  
14

15 (a) *Statutory authorization.* The Legislature of the State of Nebraska has delegated the  
16 responsibility to local governmental units to adopt zoning regulations designed to protect the  
17 public health, safety and general welfare. The Legislature, in Neb. Rev. Stat. §§ 31-1001 to 31-  
18 1022, has further assigned the responsibility to adopt, administer, and enforce floodplain  
19 management regulations to the county, city or village with zoning jurisdiction over the flood-  
20 prone area. Therefore, the city adopts this ordinance.

21 (b) *Findings of fact.*

22 (1) *Flood losses resulting from periodic inundation.* The flood hazard areas of this  
23 community are subject to inundation, which results in loss of life and property, health  
24 and safety hazards, disruption of commerce and governmental services, extraordinary  
25 public expenditures for floor protection and relief, and impairment of the tax base, all  
26 of which adversely affect the public health, safety and general welfare.

27 (2) *General causes of the flood losses.* These flood losses are caused by: (1) the  
28 cumulative effect of obstructions in floodplains causing increases in flood heights  
29 and velocities, and (2) the occupancy of flood hazard areas by uses vulnerable to  
30 floods or hazardous to others, which are inadequately elevated or otherwise  
31 unprotected from flood damages.  
32  
33  
34

1  
2 (3) *Methods used to analyze flood hazards.* This ordinance uses a reasonable method of  
3 analyzing flood hazards, which consists of a series of interrelated steps.

- 4  
5 a. Selection of a regulatory flood, which is based upon engineering calculations,  
6 which permit a consideration of such flood factors as its expected frequency  
7 of occurrence, the area inundated, and the depth of inundation. The base flood  
8 is selected for this ordinance. It is representative of large floods, which are  
9 reasonably characteristic of what can be expected to occur on the particular  
10 streams subject to this ordinance. It is in the general order of a flood, which  
11 could be expected to have a one percent chance of occurrence in any one year,  
12 as delineated on the Federal Insurance Administration's Flood Insurance  
13 Study, and illustrative materials dated December 2, 2005; March 19, 2007;  
14 and May 3, 2010 as amended, and any future revisions thereto.  
15  
16 b. Calculation of water surface profiles based on a hydraulic engineering  
17 analysis of the capacity of the stream channel and overbank areas to convey  
18 the base flood.  
19  
20 c. Computation of the floodway required to convey this flood without increasing  
21 flood heights more than one foot at any point.  
22  
23 d. Delineation of floodway encroachment lines within which no obstruction is  
24 permitted which would cause any water surface increase along the floodway  
25 profile.  
26  
27 e. Delineation of floodway flood fringe, i.e., that area outside the floodway  
28 encroachment lines, but which still is subject to inundation by the base flood.  
29

30 (c) *Statement of purpose.* It is the purpose of this ordinance to promote the public health,  
31 safety, and general welfare and to minimize those losses described in subsection 55-652(b)(1) by  
32 applying the provisions of this ordinance to:

- 33  
34 (1) Restrict or prohibit uses which are dangerous to health, safety, or property in times  
35 of flooding or cause undue increases in flood heights or velocities;  
36  
37 (2) Require that uses vulnerable to floods, including public facilities which serve such  
38 uses, be provided with flood protection at the time of initial construction;  
39  
40 (3) Protect individuals from buying lands which are unsuited for intended purposes  
41 because of flood hazard; and  
42  
43 (4) Assure that eligibility is maintained for property owners in the community to  
44 purchase flood insurance in the National Flood Insurance Program.  
45

46 Section 3. That Sec. 55-653 of the Omaha Municipal Code is hereby amended to read as  
47 follows:

1 **Sec. 55-653. General provisions.**  
2

3 (a) *Lands to which ordinance applies.* This ordinance shall apply to all lands within the zoning  
4 jurisdiction of the City of Omaha that are subject to a 1% or greater chance of flooding in any  
5 given year, now or in the future, as identified as numbered and unnumbered A Zones (including  
6 AE, AO and AH Zones) and the future base flood area of zone x on the Flood Insurance Rate  
7 Map (FIRM), for Douglas County and Incorporated Areas, including all panels and FIRM Index  
8 34055 CINDO dated December 2, 2005; March 19 2007; and May 3, 2010, or best available data  
9 as determined by more recent hydrologic and hydraulic studies completed or approved by the  
10 City of Omaha. Requirements established in Section 55-656 of this ordinance shall apply to the  
11 Zoning Districts FW and FF based on the most restrictive information available. (and  
12 unnumbered A Zones).  
13

14 (b) *The enforcement officer.* ~~The floodplain management coordinator~~ Floodplain Management  
15 Coordinator of the city is hereby designated as the city's duly designated enforcement officer  
16 under this ordinance.  
17

18 (c) *Rules for interpretation of district boundaries.* The boundaries of the floodway and flood  
19 fringe overlay districts shall be determined by scaling distances on the official zoning map, ~~or on~~  
20 ~~the flood insurance rate map~~ Flood Insurance Rate Map or Floodway Map or on the Digital  
21 Flood Insurance Rate Map. Where interpretation is needed to determine the exact location of the  
22 boundaries of the districts as shown on the official zoning map, as for example where there  
23 appears to be a conflict between a mapped boundary and actual field conditions, the ~~floodplain~~  
24 ~~management coordinator~~ Floodplain Management Coordinator shall make the necessary  
25 interpretation. In such cases where the interpretation is contested, the ~~zoning board of appeals~~  
26 Zoning Board of Appeals will resolve the dispute, upon the filing of an appeal to that board. The  
27 regulatory flood elevation for the point in question shall be the governing factor in locating the  
28 flood fringe overlay district boundary on the land. The location of the floodway overlay district  
29 boundary may be based on a map completed or approved by the City of Omaha, provided the  
30 boundary is not less restrictive than that shown on the Flood Insurance Rate Map (FIRM). The  
31 person contesting the location of the district boundary shall be given a reasonable opportunity to  
32 present his case to the ~~zoning board of appeals~~ Zoning Board of Appeals and to submit his own  
33 technical evidence, if he so desires.  
34

35 (d) *Compliance.* Within identified special flood hazard areas of this community, no  
36 development shall be located, extended, converted or structurally altered without full compliance  
37 with the terms of this ordinance and other applicable regulations.  
38

39 (e) *Abrogation and greater restrictions.* It is not intended by this ordinance to repeal, abrogate  
40 or impair any existent easements, covenants, or deed restrictions. However, where this ordinance  
41 imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances  
42 inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.  
43

44 (f) *Interpretation.* In their interpretation and application, the provisions of this ordinance shall  
45 be held to be minimum requirements and shall be liberally construed in favor of the city and  
46 shall not be deemed a limitation or repeal of any other powers granted by state statutes.  
47

48 (g) *Warning and disclaimer of liability.* The degree of flood protection required by this  
49 ordinance is considered reasonable for regulatory purposes and is based on engineering and

1 scientific methods of study. Larger floods may occur on rare occasions or the flood height may  
2 be increased by man-made or natural causes, such as ice jams and bridge openings restricted by  
3 debris. This ordinance does not imply that areas outside floodway and flood fringe district  
4 boundaries or land uses permitted within such districts will be free from flooding or flood  
5 damage. This ordinance shall not create liability on the part of the city or any officer or employee  
6 thereof for any flood damages that may result from reliance on this ordinance or any  
7 administrative decision lawfully made thereunder.

8  
9 (h) *Severability*. If any section, clause, provision or portion of this ordinance is adjudged  
10 unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance  
11 shall not be affected thereby.

12  
13 (i) *Appeal*. Where a request for a permit to develop is denied by the ~~flood management~~  
14 ~~coordinator~~ Floodplain Management Coordinator, the applicant may appeal the denial of such  
15 permit to the ~~zoning board of appeals~~ Zoning Board of Appeals.

16  
17 Section 4. That Sec. 55-654 of the Omaha Municipal Code is hereby amended to read as  
18 follows:

19 **Sec. 55-654. Definitions.**

20  
21 Unless specifically defined below, words or phrases used in this section shall be  
22 interpreted so as to give them the meaning they have in common usage and to give this ordinance  
23 its most reasonable application:

24  
25 "*Appeal*" means a request for a review of the ~~flood management coordinator~~  
26 Floodplain Management Coordinator of the ~~planning department's~~ Planning  
27 Department's interpretation of any provision of this ordinance, or a request for a  
28 variance.

29  
30 "*Area of shallow flooding*" means a designated AO or AH zone on this  
31 community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual  
32 chance of flooding to an average depth of one to three feet where a clearly defined  
33 channel is unpredictable and where velocity flow may be evident. Such flooding is  
34 characterized by ponding or sheet flow.

35  
36 "*Base flood*" means the flood having one percent chance of being equaled or  
37 exceeded in any given year.

38  
39 "*Basement*" means any area of the building having its floor subgrade (below  
40 ground level) on all sides.

41  
42 "*Best available data*" means any hydrologic and hydraulic studies which result in  
43 a base flood elevation, now or in the future, that is higher than that shown on the FIRM or  
44 FIS. Such study must be completed or approved by the City of Omaha.

45  
46 "*Community*" means the City of Omaha and the areas within its zoning  
47 jurisdiction.

1  
2            "*Development*" means any man-made change to improved or unimproved real  
3 estate, including but not limited to buildings or other structures, mining, dredging, filling,  
4 grading, paving, excavation or drilling operations or storage of equipment or materials.  
5

6            "*Existing construction*" means (for the purposes of determining rates) structures  
7 for which the "start of construction" commenced before the effective date of the FIRM or  
8 before January 1, 1975, for FIRMs effective before that date. "Existing construction" may  
9 also be referred to as "existing structures".  
10

11           "*Flood*" or "*Flooding*" means a general and temporary condition of partial or  
12 complete inundation of normally dry land areas from:  
13

- 14                   (1) The overflow of inland or tidal waters.
- 15
- 16                   (2) The usual and rapid accumulation of runoff of surface waters from  
17 any source.  
18

19           "*Flood fringe*" is that area of the floodplain, outside of the floodway, that on the  
20 average is likely to be flooded once every 100 years (i.e., that has a one percent chance of  
21 flood occurrence in any one year).  
22

23           "*Flood Insurance Rate Map (FIRM)*" means an official map of the community,  
24 on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the  
25 zones establishing insurance rates applicable to the community.  
26

27           "*Flood insurance study (FIS)*" is the official report provided by the Federal  
28 Emergency Management Agency. The report contains flood profiles, as well as the flood  
29 boundary floodway map and the water surface elevation of the base flood.  
30

31           "*Floodplain*" means any land area susceptible to being inundated by water from  
32 any source (see definition of "flooding").  
33

34           "*Floodway*" or "*regulatory floodway*" means the channel of a river or other  
35 watercourse and the adjacent land areas that must be reserved in order to discharge the  
36 base flood without cumulatively increasing the water surface elevation more than one  
37 foot.  
38

39           "*Freeboard*" means a factor of safety usually expressed in feet above a flood level  
40 for purposes of floodplain management. "Freeboard" tends to compensate for the many  
41 unknown factors that could contribute to flood heights greater than the height calculated  
42 for a selected size flood and floodway conditions, such as wave action, clogged bridge  
43 openings, and the hydrological effect of urbanization of the watershed.  
44

45           "*Highest adjacent grade*" means the highest natural elevation of the ground  
46 surface prior to construction next to the proposed walls of a structure.  
47

48           "*Historic structure*" means any structure that is: (a) listed individually in the  
49 National Register of Historic Places (a listing maintained by the Department of Interior)

1 or preliminarily determined by the Secretary of the Interior as meeting the requirements  
2 for individual listing on the National Register; (b) certified or preliminarily determined  
3 by the Secretary of the Interior as contributing to the historical significance of a  
4 registered historic district or a district preliminarily determined by the secretary to qualify  
5 as a registered historic district; (c) individually listed on a state inventory of historic  
6 places in states with historic preservation programs which have been approved by the  
7 Secretary of the Interior; or (d) individually listed on a local inventory of historic places  
8 in communities with historic preservation programs that have been certified either: (1) by  
9 an approved state program as determined by the Secretary of the Interior; or (2) directly  
10 by the Secretary of the Interior in states without approved programs.

11  
12 "*Lowest floor*" means the lowest floor of the lowest enclosed area (including  
13 basement). An unfinished or flood-resistant enclosure, usable solely for parking of  
14 vehicles, building access or storage, in an area other than a basement area, is not  
15 considered a building's lowest floor, provided that such enclosure is not built so as to  
16 render the structure in violation of the applicable non-elevation design requirements of  
17 this ordinance.

18  
19 "*Manufactured home*" means a structure, transportable in one or more sections,  
20 which is built on a permanent chassis and is designed for use with or without a permanent  
21 foundation when attached to the required utilities. The term "manufactured home" does  
22 not include a "recreational vehicle".

23  
24 "*Manufactured home park or subdivision*" means a parcel (or contiguous parcels)  
25 of land divided into two or more manufactured home lots for rent or sale.

26  
27 "*New construction*" For floodplain management purposes, "new construction"  
28 means structures for which the "start of construction" commenced on or after the  
29 effective date of the floodplain management regulation adopted by the community and  
30 includes any subsequent improvements to such structures.

31  
32 "*Overlay district*" is a district in which additional requirements act in conjunction  
33 with the underlying zoning district(s). The original base zoning district designation does  
34 not change.

35  
36 "*Principally above ground*" means that at least 51 percent of the actual cash  
37 value of the structure is above ground.

38  
39 "*Recreational vehicle*" means a vehicle which is (i) built on a single chassis; (ii)  
40 400 square feet or less when measured at the largest horizontal projections; (iii) designed  
41 to be self-propelled or permanently towable by a light duty truck; and (iv) designed  
42 primarily not for use as a permanent dwelling, but as temporary living quarters for  
43 recreational, camping, travel or seasonal use.

44  
45 "*Special flood hazard area*" is the land in the floodplain within a community  
46 subject to one percent or greater chance of flooding in any given year.

47  
48 "*Start of construction*" [for other than new construction or substantial improvements  
49 under the Coastal Barrier Resources Act (Pub. L. 97-348)] includes substantial

1 improvement, and means the date the building permit was issued, provided the actual  
2 start of construction, repair, reconstruction, rehabilitation, addition, placement, or other  
3 improvement was within 180 days of the permit date. The actual start means the first  
4 placement of permanent construction of a structure on a site, such as the pouring of slab  
5 or footings, the installation of piles, the construction of columns, or any work beyond the  
6 stage of excavation; or the placement of a manufactured home on a foundation.  
7 Permanent construction does not include land preparation, such as clearing, grading and  
8 filling; nor does it include the installation of streets and/or walkways; nor does it include  
9 excavation for a basement, footings, piers, or foundations or the erection of temporary  
10 forms; nor does it include the installation on the property of accessory buildings, such as  
11 garages or sheds not occupied as dwelling units or not part of the main structure. For a  
12 substantial improvement, the actual start of construction means the first alteration of any  
13 wall, ceiling, floor or other structural part of a building, whether or not the alteration  
14 affects the external dimensions of the building.

15  
16 *"Structure"* means a walled and roofed building that is principally above ground,  
17 as well as a manufactured home, and a gas or liquid storage tank that is principally above  
18 ground.

19  
20 *"Substantial damage"* means damage of any origin sustained by a structure  
21 whereby the cost of restoring the structure to its before-damage condition would equal or  
22 exceed 50 percent of the market value of the structure before the damage occurred.

23  
24 *"Substantial improvement"* means any reconstruction, rehabilitation, addition or  
25 other improvement of a structure, the cost of which equals or exceeds 50 percent of the  
26 market value of the structure before "start of construction" of the improvement. This  
27 includes structures which have incurred "substantial damage", regardless of the actual  
28 repair work performed. The term does not, however, include either (1) any project for  
29 improvement of a structure to correct existing violations of state or local health, sanitary  
30 or safety code specifications which have been identified by the local code enforcement  
31 official and which are the minimum necessary to assure safe living conditions, or (2) any  
32 alteration of a "historic structure" provided that the alteration will not preclude the  
33 structure's continued designation as a "historic structure".

34  
35 *"Variance"* is a grant of relief to a person from the requirements of this ordinance  
36 which permits construction in a manner otherwise prohibited by this ordinance where  
37 specific enforcement would result in practical difficulty or unnecessary hardship, as  
38 defined by state law.

39  
40 *"Violation"* means a failure of a structure or other development to be fully  
41 compliant with the community's floodplain management regulations.

42  
43 Section 5. That Sec. 55-655 of the Omaha Municipal Code is hereby amended to read as

44 follows:

45 **Sec. 55-655. Development permit.**  
46

1 (a) *Permit required.* No person, firm or corporation shall initiate any floodplain development  
2 or substantial improvement or cause the same to be done without first obtaining a separate permit  
3 for development as defined in section 55-654.  
4

5 (b) *Administration.*

6  
7 (1) The ~~flood management coordinator~~ Floodplain Management Coordinator is hereby  
8 appointed to administer and implement the provisions of this ordinance.  
9

10 (2) Duties of the ~~flood management coordinator~~ Floodplain Management Coordinator  
11 shall include, but not be limited to the following:  
12

13 a. Review all development permit applications to assure that sites are reasonably  
14 safe from flooding and that the permit requirements of this ordinance have  
15 been satisfied.  
16

17 b. Review applications for proposed development to assure that all necessary  
18 permits have been obtained from those federal, state or local governmental  
19 agencies from which prior approval is required.  
20

21 c. Review all subdivision proposals and other proposed new development,  
22 including manufactured home parks or subdivisions, to determine whether  
23 such proposals will be reasonably safe from flooding.  
24

25 d. Notify adjacent communities, the U.S. Army Corps of Engineers, and the  
26 Nebraska Department of Natural Resources prior to any alteration or  
27 relocation of a watercourse, and submit evidence of such notification to the  
28 Federal Emergency Management Agency.  
29

30 e. Assure that maintenance is provided within the altered or relocated portion of  
31 said watercourse so that the flood carrying capacity is not diminished.  
32

33 f. Verify, record and maintain record of the actual elevation (in relation to mean  
34 sea level) of the lowest floor (including basement) of all new or substantially  
35 improved structures in special flood hazard areas.  
36

37 g. Verify, record and maintain record of the actual elevation (in relation to mean  
38 sea level) to which new or substantially improved structures have been  
39 floodproofed.  
40

41 h. When floodproofing is utilized for a particular structure, the Floodplain  
42 Management Coordinator of the Planning Department shall be presented  
43 certification from a registered professional engineer or architect.  
44

45 i. Facilitate the approval of new Flood Insurance Rate Maps or best available  
46 data as necessary.  
47

1            j. Maintain records of all floodplain development permits and or building  
2            permits within the floodway or flood fringe district to ensure that structures  
3            are not substantial improvements.

4  
5            k. Filling of the flood fringe associated with new development within the  
6            Papillion Creek System shall be limited to 25% of the flood fringe within that  
7            project area, unless approved mitigation measures are implemented. If an  
8            undeveloped parcel is adjacent to a developed area and the 25% fill restriction  
9            will negatively impact the parcel, further restrictions may apply. The  
10           remaining 75% of flood fringe within the project area shall be designated as a  
11           restricted fill zone. For redevelopment, these provisions may be modified or  
12           waived in whole or in part by the Planning Director.

13  
14 (c) *Application for permit.* To obtain a floodplain development permit, the applicant shall first  
15 file an application in writing on a form furnished for that purpose. Every such application shall:

- 16  
17            (1) Identify and describe the development to be covered by the floodplain development  
18            permit;  
19  
20            (2) Describe the land on which the proposed development is to be done by lot, block,  
21            tract and house and street address, or similar description that will readily identify  
22            and definitely locate the proposed building or development;  
23  
24            (3) Indicate the use or occupancy for which the proposed development is intended;  
25  
26            (4) Be accompanied by plans and specifications for proposed construction; including  
27            but not limited to the following information: 1) existing (natural) grades, 2)  
28            proposed grades as a result of proposed development, 3) the proposed lowest floor  
29            elevation and any higher floor elevations, including attached garage, of any  
30            proposed structures, 4) the lowest and highest adjacent grades next to any proposed  
31            structures, 5) the most restrictive base flood elevation nearest the proposed  
32            development.  
33  
34            (5) Be signed by the permittee or his authorized agent who may be required to submit  
35            evidence to indicate such authority; and  
36  
37            (6) Give such other information as reasonably may be required by the ~~flood~~  
38            ~~management coordinator~~ Floodplain Management Coordinator of the ~~planning~~  
39            ~~department~~ Planning Department.

40  
41            Section 6. That Sec. 55-656 of the Omaha Municipal Code is hereby amended to read as  
42 follows:

43 **Sec. 55-656. Establishment of zoning districts.**  
44

45            Along watercourses where a floodway has been established, the mapped floodplain areas  
46 are hereby divided into the two following districts: A floodway overlay district (FW) and a flood  
47 fringe overlay district (FF) as identified in the flood insurance study, FIRM, or best available

1. data. The zoning districts created by this ordinance overlay other zoning districts and place  
2. additional restrictions upon the manner in which lands in such underlying district may be used  
3. (and accompanying map(s)). Within these districts, all uses not meeting the standards of this  
4. ordinance and those standards of the underlying zoning district shall be prohibited.

5.  
6. Section 7. That Sec. 55-657 of the Omaha Municipal Code is hereby amended to read as

7. follows:

8. **Sec. 55-657. Standards for floodplain development.**

9.  
10. (a) No permit for development shall be granted for new construction, substantial improvements  
11. and other development(s), including the placement of manufactured homes, within all numbered  
12. and unnumbered A zones (including AE, AO and AH zones) and the future base flood area of  
13. zone x unless the conditions of this section are satisfied.

14.  
15. (b) All areas identified as unnumbered A zones on the FIRM or best available data are subject  
16. to inundation of the base flood; however, the water surface elevation was not provided. The  
17. unnumbered A zones shall be subject to all development provisions of section 55-658. If flood  
18. insurance study data is not available, the community shall utilize any base flood elevation or  
19. floodway data currently available from federal, state or other sources.

20.  
21. (c) Until a floodway has been designated, no development or substantial improvement may be  
22. permitted within special flood hazard areas unless the applicant has demonstrated that the  
23. proposed development or substantial improvement, when combined with all other existing and  
24. reasonably anticipated developments or substantial improvements, will not increase the water  
25. surface elevation of the base flood more than one foot at any location as shown on the FIRM or  
26. best available data flood insurance study.

27.  
28. (d) New construction, subdivision proposals, substantial improvements, prefabricated buildings,  
29. placement of manufactured homes and other developments shall require:

30.  
31. (1) Design or anchorage to prevent flotation, collapse or lateral movement of the  
32. structure resulting from hydrodynamic and hydrostatic loads, including the effects of  
33. buoyancy;  
34.  
35. (2) That new or replacement water supply systems and/or sanitary sewage systems be  
36. designed to minimize or eliminate infiltration of flood waters into the system and  
37. discharges from the systems into flood waters, and that on-site waste disposal  
38. systems be located so as to avoid impairment or contamination;  
39.  
40. (3) Construction with materials resistant to flood damage, utilizing methods and  
41. practices that minimize flood damages, and with electrical, heating, ventilation,  
42. plumbing and air conditioning equipment and other service facilities that are  
43. designed and/or located so as to prevent water from entering or accumulating within  
44. the components during conditions of flooding; and  
45.  
46. (4) All electrical equipment and sanitary facilities, including circuits, installed electric  
47. appliances, toilets, sinks, and drains, in new developments and substantial

1 improvements shall be located so as to not be subject to flooding or shall be  
2 floodproofed to prevent damage resulting from flood levels exceeding the base flood  
3 elevation by one (1) foot. Back flow valves should be installed on all septic lines  
4 leading from the structure. That all utility and sanitary facilities be elevated or  
5 floodproofed up to the regulatory flood protection elevation.  
6

7 (e) Storage of material and equipment.

- 8  
9 (1) The storage or processing of materials that are in time of flooding buoyant,  
10 flammable, explosive, or could be injurious to human, animal or plant life is  
11 prohibited.  
12  
13 (2) Storage of other material or equipment may be allowed if not subject to major  
14 damage by floods and firmly anchored to prevent flotation or if readily removable  
15 from the area within the time available after flood warning.  
16

17 (f) Subdivision proposals and other proposed new development, including manufactured home  
18 parks or subdivisions. Subdivision proposals and other proposed new development, including  
19 manufactured home parks or subdivisions, shall be required to assure that (a) all such proposals  
20 are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such  
21 as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or  
22 eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood  
23 hazards, and (d) proposals for development (including proposals for manufactured home parks  
24 and subdivision) of five or more acres or 50 or more lots, include within such proposals the base  
25 flood elevation.  
26

27 Section 8. That Sec. 55-658 of the Omaha Municipal Code is hereby amended to read as  
28 follows:

29 **Sec. 55-658. Flood fringe overlay district (including AO and AH zones) and the future base**  
30 **flood area of zone x.**  
31

32 (a) *Permitted uses.* Any use permitted in section 55-659 shall be permitted in the flood fringe  
33 overlay district. No use shall be permitted in the district unless the standards of section 55-657  
34 are met.  
35

36 (b) *Standards for the flood fringe overlay district.*  
37

- 38 (1) New construction or substantial improvements of residential structures shall have the  
39 lowest floor, including basement, elevated to or above one foot above the highest  
40 base flood elevation available.  
41  
42 (2) New construction or substantial improvements of non-residential structures shall  
43 have the lowest floor, including basement, elevated to or above one foot above the  
44 highest base flood elevation available, or, together with attendant utility and sanitary  
45 facilities, be floodproofed so that below that level the structure is watertight with  
46 walls substantially impermeable to the passage of water and with structural  
47 components having the capability of resisting hydrostatic and hydrodynamic loads

1 and effects of buoyancy. A registered professional engineer or architect shall certify  
2 that the standards of this subsection are satisfied. Such certification shall be  
3 provided to the ~~flood management coordinator~~ Floodplain Management Coordinator  
4 of the ~~planning department~~ Planning Department as set forth in subsection 55-  
5 655(b)(2)h.  
6

7 (3) All new construction and substantial improvements that fully enclose areas below  
8 the lowest floor that are usable solely for parking of vehicles, building access or  
9 storage in an area other than a basement and which are subject to flooding shall be  
10 designed to automatically equalize hydrostatic flood forces on exterior walls by  
11 allowing for the entry and exit of floodwaters. The area below lowest floor subject  
12 to flooding shall be a maximum of four feet in height measured from the bottom of  
13 the floor joists, unless used for parking of vehicles. Designs for meeting this  
14 requirement must either be certified by a registered professional engineer or  
15 architect or meet or exceed the following minimum criteria: A minimum of two  
16 openings having a total net area of not less than one square inch for every square  
17 foot of enclosed area subject to flooding shall be provided. The bottom of all  
18 openings shall be not higher than one foot above grade. Openings may be equipped  
19 with screens, louvers, valves or other coverings or devices provided that they permit  
20 the automatic entry and exit of floodwaters.  
21

22 (4) Within AH zones, adequate drainage paths around structures on slopes shall be  
23 required in order to guide floodwaters around and away from proposed structures.  
24

25 (5) Manufactured homes.  
26

27 a. All manufactured homes shall be anchored to resist flotation, collapse, or  
28 lateral movement. Manufactured homes must be anchored in accordance with  
29 local building codes or FEMA guidelines. In the event that over-the-top frame  
30 ties to ground anchors are used, the following specific requirements (or their  
31 equivalent) shall be met:  
32

33 (i) Over-the-top ties shall be provided at each of the four corners of the  
34 manufactured home, with two additional ties per side at intermediate  
35 locations with manufactured homes less than 50 feet long requiring  
36 one additional tie per side;  
37

38 (ii) Frame ties shall be provided at each corner of the home with five  
39 additional ties per side at intermediate points with manufactured  
40 homes less than 50 feet long requiring four additional ties per side;  
41

42 (iii) All components of the anchoring system shall be capable of carrying  
43 a force of 4,800 pounds; and  
44

45 (iv) Any additions to the manufactured home shall be similarly anchored.  
46

47 b. Require that all manufactured homes be elevated on a permanent foundation  
48 such that the lowest floor of the manufactured home is at or above one foot  
49 above the base flood elevation; and be securely anchored to an adequately

1 anchored foundation system in accordance with the provisions of subsection  
2 55-658(b)(5)a.

3  
4 (6) Recreational vehicles placed on sites within the special flood hazard areas on the  
5 community's official map, shall either:

6  
7 (i) Be on the site April 1 through October 31;

8  
9 (ii) ~~and be~~ Be fully licensed and ready for highway use; or

10  
11 (iii) Meet the permit requirements and the elevation and anchoring requirements  
12 for "manufactured homes" of this ordinance. A recreational vehicle is ready  
13 for highway use if it is on its wheels or jacking system, is attached to the site  
14 only by quick-disconnect type utilities and security devices, and has no  
15 permanently attached additions.

16  
17 (7) Located within the areas of special flood hazard established in section 55-653(a) are  
18 areas designated as AO zones. These areas have special flood hazards associated  
19 with base flood depths of one to three feet where a clearly defined channel does not  
20 exist and where the path of flooding is unpredictable and indeterminate; therefore,  
21 the following provisions apply within AO zones:

22  
23 a. All new construction and substantial improvements of residential structures  
24 shall have the lowest floor (including basement) elevated above the highest  
25 adjacent grade at least as high as one foot above the depth number specified in  
26 feet on the community's FIRM (at least two feet if no depth number is  
27 specified).

28  
29 b. All new construction and substantial improvements of non-residential  
30 structures shall:

31  
32 (i) have the lowest floor elevated above the highest adjacent grade at  
33 least as high as one foot above the depth number specified in feet on  
34 the community's FIRM (at least two feet if no depth number is  
35 specified), or

36  
37 (ii) together with attendant utility and sanitary facilities be completely  
38 floodproofed to or above that level so that any space below that level  
39 is watertight with walls substantially impermeable to the passage of  
40 water and with structural components having the capability of  
41 resisting hydrostatic and hydrodynamic loads and effects of  
42 buoyancy. Such certification shall be provided to the official as set  
43 forth in subsection 55-655(b)(2)h.

44  
45 c. Adequate drainage paths around structures on slopes shall be required in order  
46 to guide floodwaters around and away from proposed structures.  
47

1 Section 9. That Sec. 55-659 of the Omaha Municipal Code is hereby amended to read as  
2 follows:

3 **Sec. 55-659. Floodway overlay district.**

4  
5 (a) *Permitted uses.* Only uses having a low flood-damage potential and not obstructing flood  
6 flows shall be permitted within the floodway district, but only to the extent that they are not  
7 prohibited by any other ordinance; accordingly, the following are the only permitted uses within  
8 the floodway district:

9  
10 (1) *Agricultural uses.*

11  
12 Animal production;  
13 Crop production;  
14 Horticulture.

15  
16 (2) *Civic uses.*

17  
18 Local utility services;  
19 Parks and recreation services.

20  
21 (b) *Standards for the floodway overlay district.* New structures for human habitation are  
22 prohibited. All encroachments, including fill, new construction, substantial improvements and  
23 other development are prohibited unless certification by a registered professional engineer or  
24 architect is provided demonstrating that the development shall not result in any increase in water  
25 surface elevations along the floodway profile during occurrence of the base flood discharge.  
26 These uses are subject to the standards of sections 55-656 and 55-657.

27  
28 Section 10. That Sec. 55-660 of the Omaha Municipal Code is hereby amended to read  
29 as follows:

30 **Sec. 55-660. Variance procedures.**

31  
32 (a) The ~~zoning board of appeals~~ Zoning Board of Appeals shall hear and decide appeals and  
33 requests for variances from the requirements of this section.

34  
35 (b) The ~~zoning board of appeals~~ Zoning Board of Appeals shall hear and decide appeals when it  
36 is alleged that there is an error in any requirement, decision, or determination made by the  
37 ~~floodplain management coordinator~~ Floodplain Management Coordinator in the enforcement or  
38 administration of this ordinance.

39  
40 (c) Any person aggrieved by the decision of the ~~zoning board of appeals~~ Zoning Board of  
41 Appeals or any taxpayer may appeal such decision to the district court as provided in Neb. Rev.  
42 Stat. § 14-413.

43

1 (d) In passing upon such applications, the ~~zoning board of appeals~~ Zoning Board of Appeals  
2 shall consider all technical evaluations, relevant factors, and the standards specified in other  
3 sections of this ordinance, and:  
4

- 5 (1) The danger that materials may be swept onto other lands to the injury of others;
- 6
- 7 (2) The danger to life and property due to flooding or erosion damage;
- 8
- 9 (3) The susceptibility of the proposed facility and its contents to flood damage and the  
10 effect of such damage on the individual owner;
- 11
- 12 (4) The importance of the services provided by the proposed facility to the community;
- 13
- 14 (5) The necessity to the facility of a waterfront location, where applicable;
- 15
- 16 (6) The availability of alternative locations, not subject to flooding or erosion damage,  
17 for the proposed use;
- 18
- 19 (7) The compatibility of the proposed use with existing and anticipated development;
- 20
- 21 (8) The relationship of the proposed use to the comprehensive plan and floodplain  
22 management program for that area;
- 23
- 24 (9) The safety of access to the property in times of flood for ordinary and emergency  
25 vehicles;
- 26
- 27 (10) The expected heights, velocity, duration, rate of rise and sediment transport of the  
28 floodwaters and effects of wave action, if applicable, expected at the site; and
- 29
- 30 (11) The costs of providing governmental services during and after flood conditions  
31 including maintenance and repair of public utilities and facilities such as sewer,  
32 gas, electrical, and water systems, and streets and bridges.
- 33

34 (e) *Conditions for variances.*

- 35
- 36 (1) Generally, variances may be issued for new construction and substantial  
37 improvements to be erected on a lot of one-half acre or less in size contiguous to and  
38 surrounded by lots with existing structures constructed below the base flood level,  
39 providing the provisions in this section, particularly (e)(2) and (e)(3) have been fully  
40 considered. As the lot size increases beyond the one-half acre, the technical  
41 justification required for issuing the variance increases.
- 42
- 43 (2) Variances may be issued for the repair or rehabilitation of historic structures upon a  
44 determination that the proposed repair or rehabilitation will not preclude the  
45 structure's continued designation as a historic structure and the variance is the  
46 minimum necessary to preserve the historic character and design of the structure.
- 47
- 48 (3) Variances shall not be issued within any designated floodway if any increase in  
49 flood levels along the floodway profile during the base flood discharge would result.

- 1
- 2 (4) Variances shall only be issued upon a determination that the variance is the
- 3 minimum necessary, considering the flood hazard, to afford relief.
- 4
- 5 (5) Variances shall only be issued upon (i) a showing of good and sufficient cause; (ii) a
- 6 determination that failure to grant the variance would result in practical difficulty or
- 7 unnecessary hardship to the applicant, as defined by state law, and (iii) a
- 8 determination that the granting of a variance will not result in increased flood
- 9 heights, additional threats to public safety, extraordinary public expense, the
- 10 creation of nuisances, fraud on or victimization of the public, or conflict with
- 11 existing local laws or ordinances.
- 12
- 13 (6) An applicant for a variance shall be given a written notice over the signature of a
- 14 community official that (1) the issuance of a variance to construct a structure below
- 15 the base flood level will result in increased premium rates for flood insurance up to
- 16 amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such
- 17 construction below the base flood level increases risks to life and property. Such
- 18 notification shall be maintained with the record of all variance actions as required by
- 19 this ordinance.
- 20

21 Section 11. That Sec. 55-661 of the Omaha Municipal Code is hereby amended to read

22 as follows:

23 **Sec. 55-661. Nonconforming use or nonconforming structure.**

24

25 (a) A structure or the use of a structure or premises which was lawful before the passage or

26 relevant amendment of this ordinance, but which is not in conformity with the provisions of this

27 section may be continued, subject to the following conditions:

- 28
- 29 (1) ~~If such use is discontinued for six consecutive months, any future use of the building~~
- 30 ~~premises shall conform to this ordinance. The public utility providers shall notify the~~
- 31 ~~floodplain management coordinator in writing of instances of nonconforming uses~~
- 32 ~~where utility services have been discontinued for a period of six months. No such~~
- 33 ~~structure or use shall be expanded, changed, enlarged or altered in a way which~~
- 34 ~~increases its nonconformity.~~
- 35
- 36 (2) ~~Uses or adjuncts thereof that are or become nuisances shall not be entitled to~~
- 37 ~~continue as nonconforming uses. If such use is discontinued for six consecutive~~
- 38 ~~months, any future use of the building premises shall conform to this ordinance.~~
- 39 ~~The public utility providers shall notify the Floodplain Management Coordinator in~~
- 40 ~~writing of instances of nonconforming uses where utility services have been~~
- 41 ~~discontinued for a period of six months.~~
- 42
- 43 (3) ~~Uses or adjuncts thereof that are or become nuisances shall not be entitled to~~
- 44 ~~continue as nonconforming uses.~~
- 45

46 (b) If any nonconforming use or structure is destroyed by any means, including flood, it shall

47 not be reconstructed if the cost is more than 50 percent of the market value of the structure

1 before the damage occurred, unless it is reconstructed in conformity with the provisions of this  
2 ordinance. This limitation does not include the cost of any alteration to comply with existing  
3 state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration  
4 of a structure listed on the National Register of Historic Places or a state inventory of historic  
5 places, provided that the alteration shall not preclude its continued designation.  
6

7 Section 12. That Sec. 55-662 of the Omaha Municipal Code is hereby amended to read  
8 as follows:

9 **Sec. 55-662. Penalties for violation.**

10 Violation of the provisions of this ordinance or failure to comply with any of its  
11 requirements (including violations of conditions and safeguards established in connection with  
12 grants of variances or special exceptions) shall constitute a misdemeanor, and be punishable as  
13 provided by state or local law. Each day such violation continues shall be considered a separate  
14 offense.  
15

16  
17 Nothing herein contained shall prevent the city or other appropriate authority from taking  
18 such other lawful action as is necessary to prevent or remedy any violation.  
19

20 Section 13. That Sec. 55-663 of the Omaha Municipal Code is hereby amended to read  
21 as follows:

22 **Sec. 55-663. Amendments.**

23  
24 The regulations, restrictions and boundaries set forth in this ordinance may from time to  
25 time be amended, supplemented, or changed, to reflect any and all changes in the National Flood  
26 Disaster Protection Act of 1973; provided, however, that no such action may be taken until after  
27 a public hearing in relation thereto, at which parties in interest and citizens shall have an  
28 opportunity to be heard. Notices of the time and place of such hearing shall be published in a  
29 newspaper of general circulation in the City of Omaha. At least ten days shall elapse between the  
30 date of this publication and the public hearing. A copy of such amendments will be provided to  
31 the Federal Emergency Management Agency. The regulations of this ordinance are in  
32 compliance with the National Flood Insurance Program Regulations as published in Title 44 of  
33 the Code of Federal Regulations, and the 1983 Nebraska Flood Plain Management Act.  
34

35 Section 14. Sections 55-651 through 55-663 of the Omaha Municipal Code as heretofore  
36 existing are hereby repealed.

37 Section 15. That this Ordinance shall be in full force and effective fifteen (15) days from  
38 the date of its passage.

INTRODUCED BY COUNCILMEMBER

Gary Hernandez

PASSED MAY 11 2010 7-0

ATTEST:

Jonda L. Niles 5-14-10  
DEPUTY CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED BY:

Jim Suttle 5-14-10  
MAYOR OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

Alan Paul 5-14-10  
CITY ATTORNEY DATE

*498*

**ORDINANCE NO.** 38724

**AN ORDINANCE** to amend Sections 55-651 through 55-663 of the Omaha Municipal Code; to adopt new and more detailed digital flood hazard maps for the West Papillion Creek, Hell Creek and North Branch West Papillion Creek; in addition to updating the flood fringe and floodway overlay district regulations; to repeal Sections 55-651 through 55-663 as heretofore existing; and to provide the effective date thereof.

Pln1725ece

*6*

**PRESENTED TO COUNCIL**

1st Reading APR 27 2010 - Hearing  
*5/11/10*

Hearing MAY - 4 2010 - Over to  
*5/11/10*

Final Reading MAY 11 2010

Passed 7-0

**PUBLICATIONS**

**PUBLICATION OF HEARING**

Date \_\_\_\_\_

**PUBLICATION OF ORDINANCE**

Date \_\_\_\_\_

**BUSTER BROWN**  
City Clerk

