CITY OF BOX ELDER **PENNINGTON & MEADE COUNTIES** **STATE OF SOUTH DAKOTA**

ORDINANCE NO. 806

AN ORDINANCE AMENDING CHAPTER 12 ENVIRONMENT OF THE CITY OF BOX ELDER MUNICIPAL CODE PERTAINING TO FLOODPLAIN AND STORMWATER MANAGEMENT

WHEREAS, Chapter 12 of the City of Box Elder Municipal Code establishes requirements for floodplain administration and the reduction of flood hazards; and

WHEREAS, the City desires to streamline the floodplain development permit process by assigning administrative review and approval to the Floodplain Administrator; and

WHEREAS, updates to the City's stormwater and flood hazard reduction standards are necessary to address drainage conditions and provide greater protection for structures and property; and

WHEREAS, additional amendments are necessary to clarify administrative responsibilities and procedures and to provide for consistent administration of the City's floodplain regulations; and

WHEREAS, new language shall be indicated by underscore and language to be deleted shall be indicated by strike-through.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Box Elder, South Dakota:

Section 1. ARTICLE 12-I IN GENERAL (RESERVED) of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Article 14-I ~~IN~~ GENERALLY (RESERVED)

Section 2. ARTICLE 12-I GENERALLY Sections 12-1 – 12-18 of the City of Box Elder Municipal Code is hereby *Reserved* as follows:

Sec 12-1 thru Sec 12-18 (Reserved)

Section 3. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-1 GENERALLY, SECTION 12-22 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-22 Definitions

Other residential building means a residential building that contains more than four apartments/units. This category includes condominium and apartment buildings as well as hotels, motels, tourist homes and ~~roominghouses~~ rooming houses where the normal occupancy of a guest is six months or more. These buildings are permitted incidental occupancies. The total area of incidental occupancy is limited to less than 25 percent of the total floor area within the building. Examples of other residential buildings include dormitories and assisted living facilities.

Substantial damage means damage of any origin sustained by a structure. ~~The~~ where the cumulative cost of restoring the structure to its before-damaged condition during a three-year rolling period ~~would~~ equals or exceeds 50 percent of the ~~market value~~ valuation of the structure, as defined in this section, before the damage occurred.

~~*Substantially improved building*~~ *Substantial improvement* means a building that has undergone reconstruction, rehabilitation, addition, or other improvement, which the cumulative cost ~~of which~~ during a three-year-rolling period equals or exceeds 50 percent of the ~~market value of the building~~ valuation of the structure, as defined in this section, before the start of construction of the improvement. The term ~~"substantially improved building"~~ substantial improvement does not include a building that has undergone reconstruction, rehabilitation, addition, or other improvement related to:

a. Any project or improvement of a building to correct existing violations of a state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
b. Any alteration of a historic building, provided that the alteration will not preclude the structure's continued designation as a historic building.

~~*Substantially improved property means either a substantially improved building, or the contents within a substantially improved building, or both.*~~

Valuation means, for the purpose of this article and in determining substantial damage or substantial improvement, the valuation of the structure listed on the applicable county equalization site at the time of the damage or permit application, ~~and shall be utilized for determining the overall value of the property or structures.~~ excluding the value of the land. An applicant may submit, at the applicant's expense, an appraisal of the structure prepared by a licensed appraiser for consideration by the floodplain administrator.

Variance means a specific exception, granted by the board of adjustment ~~common council~~, to the terms where such deviation will not be contrary to the public interest and will be granted due to circumstances peculiar to a property.

Section 4. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-1 GENERALLY, Sections 12-30 – 12-46 of the City of Box Elder Municipal Code is hereby *Reserved* as follows:

Sec 12-30 thru Sec 12-46 (Reserved)

Section 5. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Section 12-47 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-47 Council Intent; Scope

The common council hereby:

a. Assures the Federal Insurance and Mitigation Administration that it will enact as necessary, and maintain in force for those areas having flood or mudslide hazards, adequate land use and control measures with effective enforcement provisions consistent with the criteria set forth in 1910 of the National Flood Insurance Program regulations;
b. Invests the mayor and common council with the authority and means to:
    1. Delineate or assist the administrator, at his request, in delineating the limits of the areas having special flood and mudslide hazards on available local maps of sufficient scale to identify the location of building sites;
    2. Provide such information as the administrator may request concerning present uses and occupancy of the floodplain and mudslide areas;
    3. Cooperate with federal, state and local agencies and private firms which undertake to study, survey, map and identify floodplain or mudslide areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and mudslide areas in order to prevent aggravation of existing hazards; and
    4. Submit on the anniversary date of the city's initial eligibility an annual report to the administrator on the progress made during the past year within the city in the development and implementation of floodplain and mudslide area management measures.
c. Directs the Floodplain Administrator ~~Appoints the city finance officer, pursuant to SDCL 9-14-17,~~ to maintain for public inspection and to furnish upon request a record of elevations (in relation to mean sea level) of the lowest flood (including basement) of all new or substantially improved structures located in the special flood hazard

areas. If the lowest floor~~d~~ is below grade on one or more sides, the elevation of the flood immediately above must also be recorded; and

d. Confirms that it intends to take such other official action as may be reasonably necessary to carry out the objectives of the program.

Section 6. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Section 12-48 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-48 Designation of the Floodplain Administrator

The ~~common council~~ City Administrator shall appoint~~s~~ a qualified City employee to serve as ~~the planning director or his designee as~~ the floodplain administrator to administer and implement the provisions of this division and other appropriate sections of National Flood Insurance Program regulations pertaining to floodplain management.

Section 7. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Section 12-49 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-49 Duties and Responsibilities of the Floodplain Administrator

Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

a. To maintain and hold open for public inspection all records pertaining to the provisions of this article.
b. To review permit applications to determine whether a proposed building site, including the placement site of a factory-built home, will be reasonably safe from flooding.
c. To review each floodplain development permit application and ~~make a recommendation for~~ approv~~al~~, approv~~al~~ with conditions, or deny~~ial~~ the applications in accordance with this article. ~~to the commission. The commission shall make a recommendation for approval, approval with conditions, or denial to the common council.~~
d. To review floodplain development permit applications for proposed development to ensure that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
e. To interpret, as needed, the exact location of a boundary of an area of special flood hazard. For example, where there appears to be a conflict between a mapped boundary and actual field conditions, the floodplain administrator shall make the necessary interpretation.
f. To notify adjacent communities, the South Dakota Department of Agriculture and Natural Resources (DANR), and South Dakota Office of Emergency Management

(OEM) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

g. To ensure that the flood-carrying capacity within an altered or relocated portion of any watercourse is maintained.

h. To obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source when base flood elevation data has not been provided by the adopted FIRM, in order to administer the provisions of this article.

i. To review floodplain development permit applications for proposed development to ensure that no new construction, substantial improvements, or other development (including fill) be permitted within areas of special flood hazard with designated base flood elevations on the adopted FIRM when a floodway has not been designated, unless it is demonstrated by the applicant's professional engineer that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood at any point within the city.

j. To ensure that FEMA has approved a CLOMR ~~before the commission and common council have reviewed and~~ approv<u>inged</u> a floodplain development permit for which a CLOMR will be required.

k. To ~~declare that~~ <u>determine whether</u> a structure is a repetitive loss<u>,</u> ~~or is~~ substantially damaged<u>, or substantially improved.</u>

l. To ensure that certified plans and specifications for development within areas of special flood hazard are reviewed for compliance with the requirements of this article.

m. To coordinate with ~~the commission, common council~~, <u>engineering,</u> public works and other departments to ensure that the requirements of this article are fully met.

n. To advise the planning commission and ~~common~~ <u>city</u> council when a critical facility is planned within the floodplain.

<u>Section 8.</u> ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Section 12-51 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-51 Establishment of Floodplain Development Permit

a. A floodplain development permit shall be obtained, before construction begins, for any building or structure that will be built within an area of special flood hazard within the city limits. Building, grading, or moving permits shall not be issued by city planning department for sites within areas of special flood hazard before the ~~common council has approved a~~ floodplain development permit <u>has been approved</u> for the site. The floodplain development permit shall be required to ensure conformance with the provisions of this division.

Section 9. DIVISION 12-II-2 ADMINISTRATION, Section 12-52 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-52 Floodplain Development Permit Procedure

c. The provisions of this division and the following relevant factors shall be considered during the review ~~and recommendation~~ of a floodplain development permit application by the floodplain administrator~~. and the planning commission before the common council~~ The floodplain administrator shall approve~~s~~, approve~~s~~ with conditions, or deny~~ies the~~ a floodplain development permit~~:~~ application based upon compliance with this article and consideration of the following relevant factors:

Section 10. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Section 12-53 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-53 Building Permit System for Applying for Flood Insurance

a. The ~~planning commission and common council~~ shall floodplain administrator shall review all building permit applications in a flood hazard area for new construction or substantial improvements, to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including site fabricated, prefabricated, manufactured, mobile homes, etc.) must:
    1. Be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure;
    2. Use construction materials and utility equipment that are resistant to flood damage; and
    3. Use construction methods and practices that will minimize flood damage.
b. The ~~common council~~ floodplain administrator and city engineer shall review subdivision proposals and other proposed new developments to ensure that:
    1. All proposals are consistent with the need to minimize flood damage;
    2. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage; and
    3. Adequate drainage is provided so as to reduce exposure to flood hazards.
c. The common council shall require new or replacement water supply systems or sanitary sewage systems to be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

Section 11. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Section 12-54 of the City of Box Elder Municipal Code is hereby *Adopted* to read as follows:

Section 12-54 Fees

Fees for all administrative activities, amendments, appeals, applications, inspections, notifications, permits, or variances related to or required by this chapter shall be established and amended by the City Council in the Master Fee Schedule.

Section 12. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-2 ADMINISTRATION, Sections 12-55 – 12-79 of the City of Box Elder Municipal Code is hereby *Reserved* as follows:

Sec 12-55 thru Sec 12-79 (Reserved)

Section 13. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-3 FLOOD HAZARD REDUCTION, Section 12-81 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-81 Specific Standards

a. *Residential construction*. New construction or substantial improvement of any residential structure shall have the lowest floor (including the basement floor), elevated at least two (2) feet ~~one foot~~ above the FIRM base flood elevation. Additionally, the lowest opening (window or door), must be minimum of two (2) feet above surface overflow point of any ponds or storm water systems in the related drainage basin. The construction of any residential structure shall conform to the guidance provided in FEMA Technical Bulletin 10-01, ensuring that structures built on fill in or near special flood hazard areas are reasonably safe from flooding (FEMA Publication FIA-TB-10). A professional engineer, architect, or registered land surveyor shall submit an elevation certificate to the floodplain administrator that certifies this elevation data both for the per-plans application and for the post-construction as-built circumstances.

Section 14. ARTICLE 12-II FLOOD DAMAGE PREVENTION AND CONTROL, DIVISION 12-II-3 FLOOD HAZARD REDUCTION, Sections 12-84 – 12-109 of the City of Box Elder Municipal Code is hereby *Reserved* as follows:

Sec 12-84 thru Sec 12-109 (Reserved)

Section 15. DIVISION 12-II-4 VARIANCES, Section 12-110 of the City of Box Elder Municipal Code is hereby *Amended* to read as follows:

Section 12-110 Variances Procedure

(a) The city board of adjustment shall hear and render judgment on requests for variances from the requirements of this division.

(b) Any person or persons, jointly or severally, or any officer, department, board, or bureau of the municipality, aggrieved by any decision of the board of adjustment may present to a court of record a petition for writ of certiorari in accordance with SDCL § 11-4-25. The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to FEMA and SDOEM upon the issuance of a variance by the ~~common council.~~ board of adjustment.

(c) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or smaller in size that is contiguous to and surrounded by lots with existing structures that are constructed below the base flood elevation, providing the relevant factors of section 12-52(c) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(d) Upon consideration of the factors noted above and the intent of this article, the ~~common council~~ board of adjustment may attach such conditions to the granting of a variance as it deems necessary to further the purpose and objectives of this article.

(e) Variances shall not be issued within any designated floodway if any increase in base flood elevation during the base flood discharge would result.

(f) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(g) The following are prerequisites for granting a variance:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

a. The applicant showing a good and sufficient cause;

b. A determination by the board of adjustment that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination by the board of adjustment 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 or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any applicant to whom a variance is granted shall be given written notice by the floodplain administrator that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the

cost of flood insurance will be commensurate with the increased risk or possibly denied resulting from the reduced lowest floor elevation.

(h) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(1) The criteria outlined in this division are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Section 16. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such inconsistency.

Section 17. If any section, clause or phrase shall be held unconstitutional or invalid, it shall not affect the balance of this ordinance.

PASSED AND APPROVED ON FIRST READING this 3 day of November, 2026.

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 17 day of November, 2026.

Larry Larson

Larry Larson, Mayor

ATTEST:

PBJ

Renee Baker, Finance Officer

(SEAL)

CITY OF BOX ELDER CORPORATE SEAL SOUTH DAKOTA

Published: November 24, 2026

ATTESTATION

I, Chaz Kokesh, the City Clerk of the City of Box Elder, South Dakota, do hereby attest and state the above ordinance was published in the manner required by law and that all procedures required by the State of South Dakota law were complied with. This ordinance shall become effective on December 13, 2024.

Chaz Kokesh, City Clerk