

AMENDING SECTION 107-103 OF THE FLOODPLAIN MANAGEMENT ORDINANCE TO ADD LANGUAGE IN CONFORMANCE WITH FEMA STANDARDS IN ORDER TO REMAIN IN THE NATIONAL FLOOD INSURANCE PROGRAM

Background:

Nixa City Council approved ordinance #2330 at the October 10, 2023, Council meeting. It included language updates to our floodplain ordinance to comply with the Federal Emergency Management Agency (FEMA) requirements for communities participating in the National Flood Insurance Program (NFIP). The language updates were based off a model ordinance provided to us by the State Emergency Management Agency (SEMA) Floodplain Section. We are required to provide our new floodplain management ordinance to the NFIP coordinator at SEMA 2-3 weeks prior to the effective date on the new Flood Insurance Rate Map (FIRM) panels. The effective date of the new FIRM panels is November 2, 2023.

Analysis:

Proposed Council Bill #2023-44 was emailed to the State NFIP Coordinator on 9/26/2023, as requested for review prior to City Council approval. No response was provided by the State NFIP Coordinator. Staff proceeded with the approval process. On 10/12/2023, staff emailed the approved ordinance #2330 to the State NFIP Coordinator and it was then discovered that staff had stricken out the first part of Sec. 107-103(b)(2) concerning encroachments on designated floodways, "The community shall prohibit any encroachments," was stricken from the ordinance. This makes our entire floodplain management ordinance non-compliant with FEMA regulations. The proposed revisions to Sec. 107-103 add back the language that encroachments shall be prohibited, written in a way that allows the section to be clear and precise. The State NFIP Coordinator has reviewed the proposed language change and commented that our new language is stated correctly.

Recommendation:

To get the corrected language approved by City Council before the effective date of the new FIRM panels, this ordinance has to be read as an emergency ordinance. If the floodplain management ordinance is not approved by FEMA before the effective date of the new panels (11/2/2023), Nixa will be suspended from the NFIP and the residents that have flood insurance will not be able to renew their policies and those wanting new flood insurance will not be able to get flood insurance until Nixa is in good standing with the NFIP requirements. Staff recommends approval.

MEMO SUBMITTED BY:

Scott Godbey | Director of Planning and Development

sgodbey@nixa.com | 417-725-5850

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING SECTION
2 107-103 OF THE NIXA CITY CODE FOR THE PURPOSE OF UPDATING THE CITY'S
3 REGULATIONS RELATED TO FLOODPLAIN MANAGEMENT; AND DECLARING AN
4 EMERGENCY PURSUANT TO SECTION 3.11(F) OF THE CITY CHARTER.

5 _____
6
7 **WHEREAS** City Council approved Ordinance No. 2330 at its October 10, 2023,
8 regular meeting; and

9
10 **WHEREAS** said Ordinance contained updates to the City's floodplain
11 management regulations to bring the City into compliance with newly adopted Federal
12 Emergency Management Agency ("FEMA") regulations applicable to communities
13 participating in the National Flood Insurance Program; and

14
15 **WHEREAS** the City provided the text of what would become Ordinance No. 2330
16 to the State Emergency Management Agency ("SEMA") for review on September 26,
17 2023; and

18
19 **WHEREAS** SEMA provided no response regarding the text submitted; and

20
21 **WHEREAS** on October 12, 2023, staff provided a copy of Ordinance No. 2330 to
22 SEMA and it was discovered that the text of Section 107-103 was non-compliant with
23 FEMA requirements; and

24
25 **WHEREAS** staff have prepared updates to Section 107-103 which have been
26 approved by SEMA; and

27
28 **WHEREAS** City Charter Section 3.11(f) authorizes the City Council to adopt an
29 ordinance on the day of its introduction if it contains a declaration describing in clear and
30 specific terms the facts and reasons constituting the emergency; and

31
32 **WHEREAS** the Council finds and declares that the adoption of this Ordinance
33 constitutes an emergency for the reasons set forth herein; and

34
35 **WHEREAS** the Council desires to adopt the amendment to Section 107-103
36 contemplated herein.

37
38 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
39 **NIXA, AS FOLLOWS, THAT:**

40
41 **SECTION 1:** Chapter 107, Section 107-103 of the Nixa City Code is hereby
42 amended by repealing said Section in its entirety and adopting in lieu thereof a new
43 Section, which shall read as follows:

44
45 (Note: Language to be added is indicated by being underlined. Language to be removed
46 is indicated by being ~~stricken~~.)

47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92

Sec. 107-103. Specific standards.

(a) In all areas identified as numbered and unnumbered A zones and AE zones, where base flood elevation data has been provided, as set forth in section 107-102(b), the following provisions are required:

(1) Residential construction. New construction or substantial improvement of any residential building, including manufactured homes, shall have the lowest floor, including basement, elevated to or one foot above base flood level. The elevation of the lowest floor shall be certified by a Missouri licensed land surveyor, engineer, or architect.

(2) Nonresidential construction. New construction or substantial improvement of any commercial, industrial, or other nonresidential building (including manufactured homes) shall have the lowest floor, including basement, elevated to or one foot above the base flood level, or together with attendant utility and sanitary facilities, be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A Missouri registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in section 107-41(7)c. The FEMA, Region VII office recommends elevating to one foot above the base flood elevation.

(3) *Enclosures below lowest floor.* Require, for all new construction and substantial improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and

b. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(b) *Floodways.* Floodways pose an extreme hazard ~~extremely hazardous~~ are due to the velocity of flood waters that carry debris and potential projectiles. In all areas of special

93 flood hazard, once floodway data is obtained, as set forth in this chapter, the following
94 provisions are required:

- 95
- 96 (1) The designated floodway shall be based on the standard that the area chosen for
97 the floodway must be designed to carry the waters of the base flood, without
98 increasing the water surface elevation more than one foot at any point.;
- 99
- 100 (2) Encroachments, including fill, new construction, substantial improvements, and
101 other development within the designated regulatory floodway, shall be prohibited
102 unless it has been demonstrated through hydrologic and hydraulic analyses
103 performed in accordance with standard engineering practice that the proposed
104 encroachment would not result in any increase in flood levels within the community
105 during the occurrence of the base flood discharge.;
- 106
- 107 (3) Encroachments may be permitted within the adopted regulatory floodway that
108 would result in an increase in base flood elevations, provided that the floodplain
109 administrator applies for a conditional FIRM and Floodway revisions, fulfills the
110 requirements of such revisions as established under the provisions of 44 CFR §
111 65.12, and receives the approval of FEMA.
- 112
- 113 (4) If the requirements of section 107-103(b)(2) are satisfied, all new construction and
114 substantial improvements shall comply with all applicable flood hazard reduction
115 provisions of this Chapter.
- 116
- 117 (5) In unnumbered A zones, the floodplain administrator shall obtain, review, and
118 reasonably utilize any base flood elevation or floodway data currently available
119 from Federal, State, or other sources as set forth in section 107-102(b).

120

121 **SECTION 2:** Savings Clause. Nothing in this Ordinance shall be construed to
122 affect any suit or proceeding now pending in any court or any rights acquired, or liability
123 incurred nor any cause or causes of action occurred or existing, under any act or
124 ordinance repealed hereby.

125

126 **SECTION 3:** The City Council finds and declares that the adoption of this
127 Ordinance constitutes an emergency pursuant to Section 3.11(f) of the City Charter. The
128 reason for the emergency declaration is that if the revisions to the City’s floodplain
129 management regulations are not approved by FEMA before November 2, 2023, the City
130 would be suspended from participating in the National Flood Insurance Program.
131 Residents of the City who have flood insurance through this program will be unable to
132 renew this insurance and those seeking this insurance will be unable to purchase said
133 insurance. To ensure that there is no gap in coverage for the residents of the City it is
134 necessary to adopt this Bill as quickly as possible.

135

136 **SECTION 4:** Severability Clause. If any section, subsection, sentence, clause, or
137 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect
138 the validity of the remaining portions of this Ordinance. The Council hereby declares that

139 it would have adopted the Ordinance and each section, subsection, sentence, clause, or
140 phrase thereof, irrespective of the fact that any one or more sections, subsections,
141 sentences, clauses, or phrases be declared invalid.

142
143 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final
144 passage by the City Council and after its approval by the Mayor, subject to the provisions
145 of section 3.11(g) of the City Charter.

146
147 **ADOPTED BY THE COUNCIL THIS 23rd DAY OF October, 2023.**

148
149
150 ATTEST:
151
152
153 _____
154 PRESIDING OFFICER CITY CLERK

155
156 **APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.**

157
158 ATTEST:
159
160
161 _____
162 MAYOR CITY CLERK

163 APPROVED AS TO FORM:
164
165 _____
166 CITY ATTORNEY