

How and Why to Update Your Floodplain Ordinance

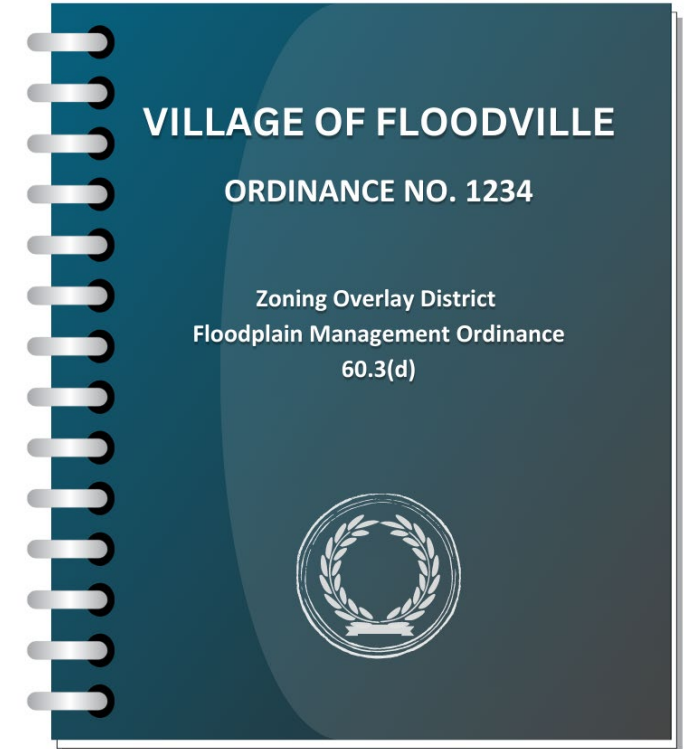
Elijah Kaufman, CFM

NeDNR Floodplain Management
Outreach and CRS Coordinator


NEBRASKA
DEPT. OF NATURAL RESOURCES

Why Pass a New Ordinance?

- To adopt new panels
- To make your ordinance easier to use
- To ensure it meets FEMA and State minimum standards
- Easier than fixing (or finding 😊) your old ordinance
- Using a standard ordinance can be helpful



When is an Ordinance Update Required?

- If the ordinance is determined out of compliance with current NFIP or State regulations. This is usually determined through an audit (CAC or CAV)
 - If your community is receiving new Flood Insurance Rate Maps (FIRMs) or a new Flood Insurance Study (FIS)
 - If your community's jurisdictional boundaries change
 - If Federal or State minimum standards change
- 

Communities with Active Mapping Projects that are Approaching Completion

- Wayne County
- Cass County
- Nuckolls County
- Thayer County
- Dixon County
- Cheyenne County
- Deuel County
- Cedar County
- Boone County
- Kearney County
- City of Bayard
- City of Bridgeport

The communities listed above should be ready to update their ordinance or pass resolutions/amendments to adopt the new maps.

The Process with NeDNR

Board agrees on an ordinance draft

- Review the model ordinance
- Choose to keep or remove optional language
- Assign the Floodplain Administrator position

Draft ordinance submitted to NeDNR for review

- Estimate for 10 working days
- Review includes a crosscheck with State and Federal minimum standards

NeDNR provides comments on draft ordinance

- Comments may include missing language, incorrect FIRM panels referenced, etc.
- Will be your community's responsibility to make changes

Ordinance forwarded to FEMA for final approval

- Again, estimate 10 working days
- If FEMA returns any comments, we will coordinate with you on the required changes

Once approved, your community may adopt the new ordinance

- We will notify you as soon as FEMA gives approval for adoption
- We will request a final signed/stamped copy of the adopted ordinance

How to Enact Ordinances and Resolutions

The following information was provided by the League of Nebraska Municipalities

Ordinances vs. Resolutions

- There are differences between ordinances and resolutions
- Differences of what they are and how they are treated in statute
 - Resolution creates policy
 - Ordinances are municipal law

Introduction of Ordinances

- Unless the city council or board of trustees has specified other procedures, ordinances are introduced by members of the city council or village board in one of the following ways:

A city council member or village board member, in the presence and hearing of a majority of the members elected to the city council or village board, will read aloud the substance of the proposed ordinance and file a copy with the clerk for future consideration; or



Introduction of Ordinances

- Unless the city council or board of trustees has specified other procedures, ordinances are introduced by members of the city council or village board in one of the following ways:

A city council member or village board member may present the proposed ordinance to the clerk who, in the presence and hearing of a majority of the members elected to the city council or village board, will read aloud the substance of the ordinance and file it for future consideration

Introduction of Resolutions

- Unless the city council or village board of trustees provides otherwise, resolutions are introduced in the same method as introduction of ordinances

Style of Ordinances and Title

- The style of all ordinances of a city of the first or second class or village shall be:

Be it ordained by the mayor and city council of the city of,

or

Be it ordained by the chairperson and board of trustees of the village of

Reading and Passage of Ordinances and Resolutions

All ordinances and resolutions require for their passage or adoption the concurrence of a majority of all members elected to the city council or village board of trustees.

Ordinances of a general or permanent nature are read by title on 3 different days unless three-fourths of the city council or village board of trustees vote to suspend this requirement

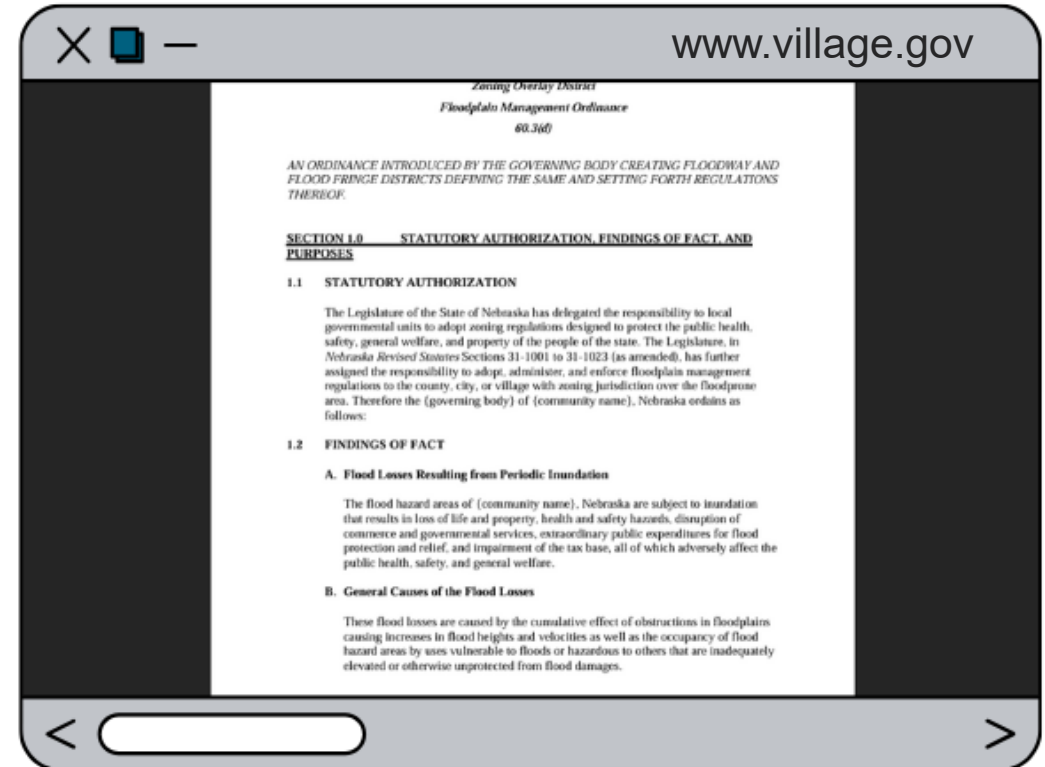
If the requirement is suspended, the ordinances are read by title and then moved for final passage.

Publication of Ordinances

- All ordinances of a general nature, before they take effect, need to be published within 15 days after they are passed:
 - in a legal newspaper in or of general circulation in the city or village or
 - by publishing in book or pamphlet form

Publication of Ordinances

- New law passed in 2021: LB 159 (Urban Affairs Committee)
- Allows for the publication of ordinances in “electronic form”



Powers of Village Board Chairs

- The chairperson of the village board of trustees is required to:
 - Have the ordinances of the village printed and published for the information of the inhabitants; and,
 - Carry out and ensure the ordinances are being used

Powers of Mayors

- Mayors can veto or sign ordinances and resolutions
- If the mayor approves, they sign it
- If the mayor vetoes it, it is returned to the city council within 7 days. Two-thirds of the city council can overrule the veto
- If mayor doesn't sign within the 7 days, it becomes effective without their signature

Effective Dates

- Most ordinances go into effect 15 days after their passage
 - + For communities adopting new floodplain maps, you must ensure the ordinance is effective by the FIRM effective date
- Emergency ordinances are allowed in cases of riot or impending danger, failure of a public utility, or any other emergency
 - These ordinances take effect upon the proclamation of the mayor or village board chair

Enacting *County* Ordinances

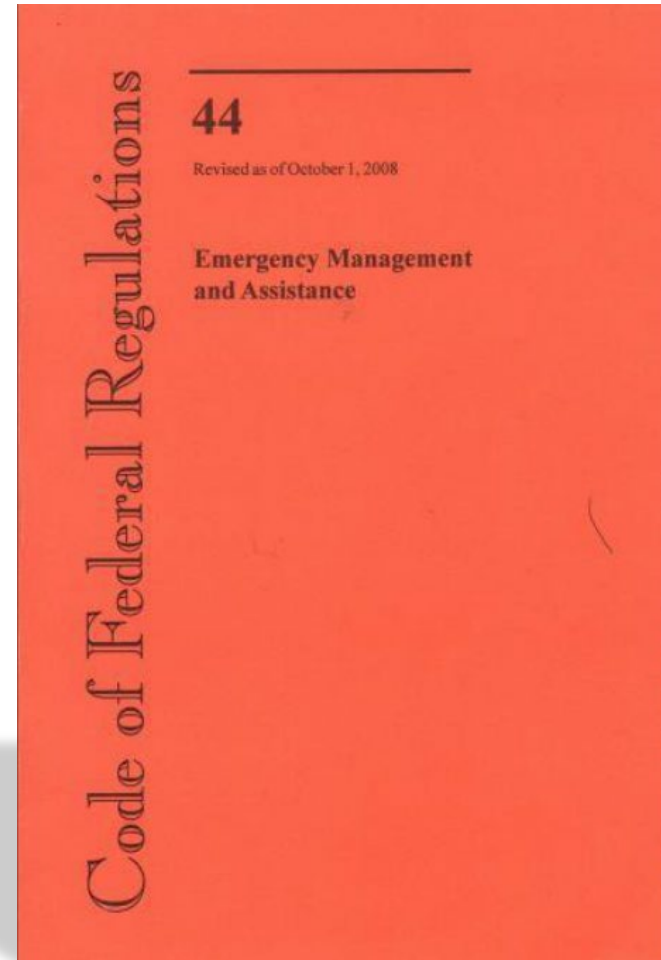
- Counties are allowed to regulate certain subjects by ordinance
- Process of adopting ordinances is similar to municipalities
- State laws outlining process of enacting county ordinances can be found at Neb. Rev. Stat. 23-187 to 23-193
- Please contact the Nebraska Association of County Officials for more information: (402) 434-5660

QUESTIONS SO FAR?

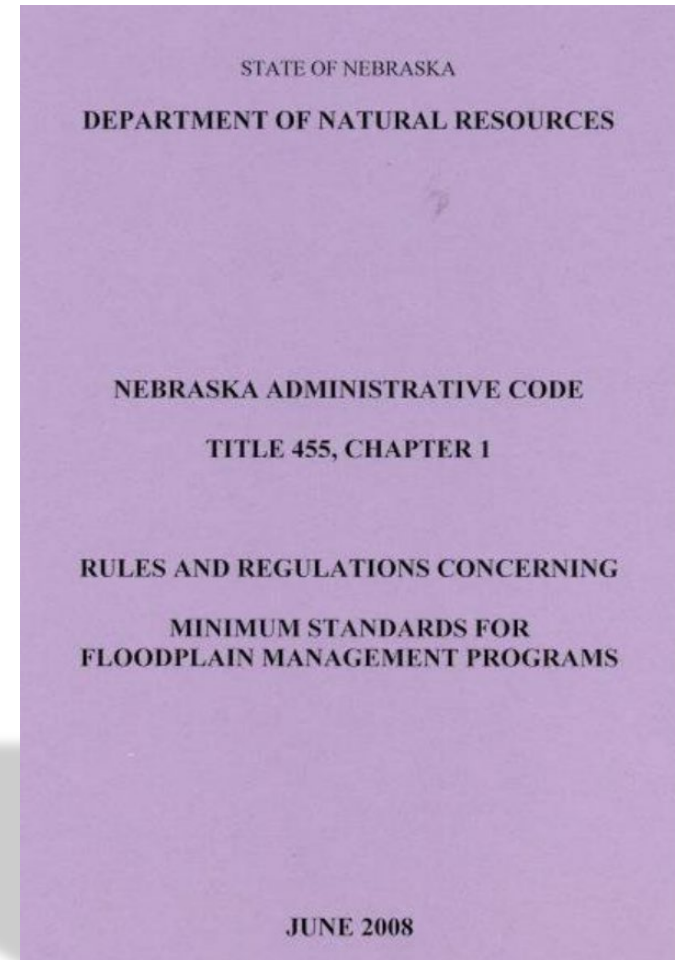


Nebraska's Model Floodplain Ordinance

State regulations
are based on
Title 44, Part 60.3
of the Code of
Federal
Regulations,
“44 CFR 60.3”



Nebraska Minimum
Standards for
Floodplain
Management
Programs (Nebraska
Administrative Code:
Title 455, Chapter 1)



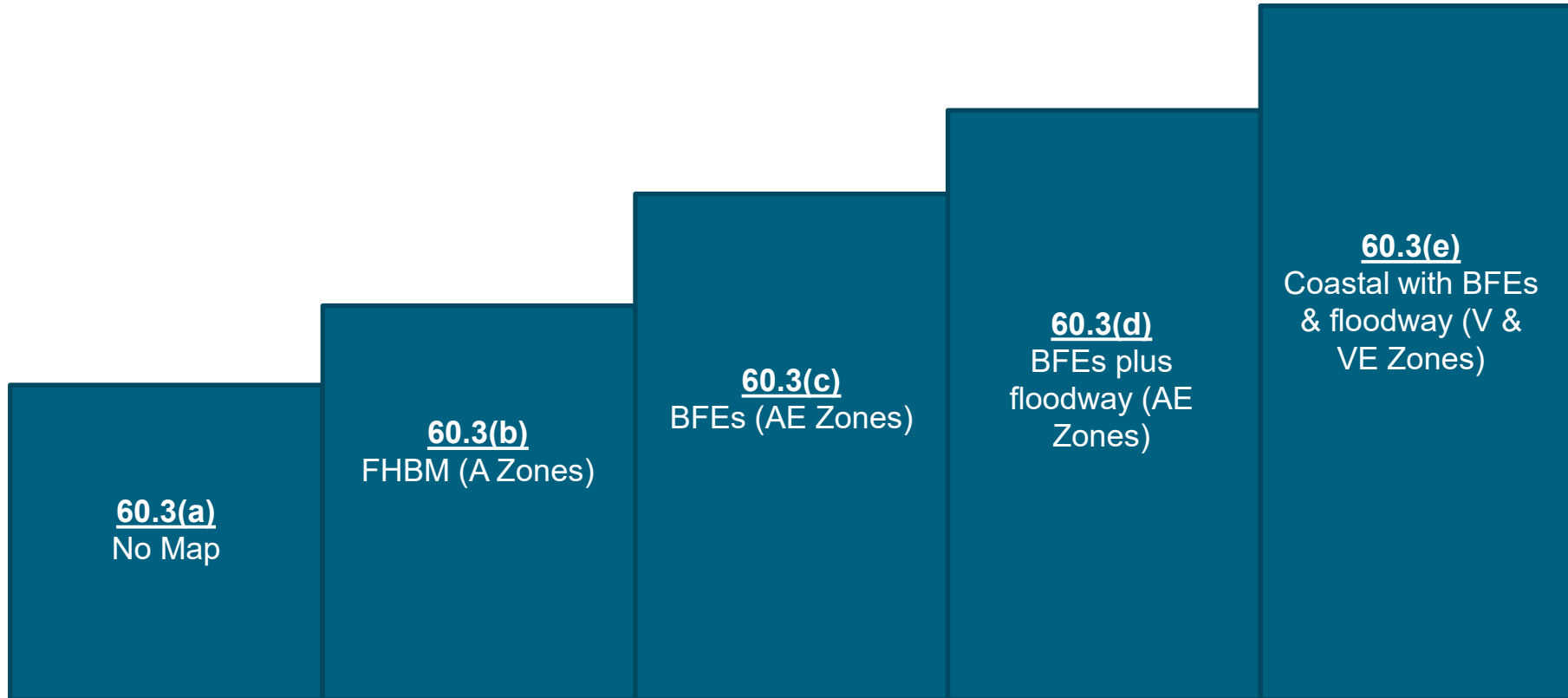
The Model Ordinance

There are 3 model ordinances:

1. 60.3(b): for communities that only have basic zones (Zone A)
2. 60.3(c): for communities with any AE, AO, or AH, but NO FLOODWAY
3. 60.3(d): for communities that have any of the above zones and floodway

We will be using the 'D' ordinance in this presentation

44 CFR 60.3



The Legal Stuff

- 1.1 STATUTORY AUTHORIZATION
- 1.2 FINDINGS OF FACT
- 1.3 STATEMENT OF PURPOSE
- 1.4 ADHERENCE TO REGULATIONS
- 2.1 LANDS TO WHICH ORDINANCE APPLIES
- 2.2 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES
- 2.3 COMPLIANCE
- 2.4 ABROGATION AND GREATER RESTRICTIONS
- 2.5 INTERPRETATION
- 2.6 WARNING AND DISCLAIMER OF LIABILITY
- 2.7 SEVERABILITY

Adopting Your Floodplain Maps

Section 2.1 – Lands to which the ordinance applies (FIRMs)

- References the floodplain maps for your community by panel number or index, and by effective date

Section 3.0 – Establishment of Zoning Districts

- Establishes the floodplain (and floodway) as an overlay district

Establishing the Administration

Section 4.0 - Establishes the:

- Floodplain administrator position/title
- Duties of the floodplain administrator
- Floodplain development permit application process
- Variance and appeals procedures
- Enforcement authority

Standards for Floodplain Development

Section 5.0 - Covers the general expectations for development in the floodplain:

- Alteration of a watercourse
- Encroachments
- Regulations in the floodway overlay district
- Elevation and floodproofing requirements for structures, including manufactured/mobile homes
- Existing (grandfathered) structures
- Design standards for development (anchoring, drainage, building materials, utility standards, material storage, etc.)

Nonconforming Use

Section 6.0 – For existing nonconforming structures, this section:

- Establishes “discontinued use” clause
 - Allows your community to set a time limit for how long a structure may be unused
- Uses that are designated as nuisances may not continue nonconformance
- Substantially damaged structures may not continue nonconformance

Sections 7 and 8

Section 7.0 Amendments

Section 8.0 Definitions

- Any optional language that adds or removes a type of development will change which definitions are required

i.e. Adding “appurtenant structures” will require them to be defined in Section 8.0

Optional Language

- The model ordinance has examples for higher standards that you may choose to include or take out
- Some language is highly recommended to improve the permitting capacity your community has
- Other language is prohibitory to ensure safety in your community, and to align with other regulations you may have
- We will discuss further by going through the model ordinance live!



QUESTIONS?

Elijah Kaufman, CFM

elijah.kaufman@nebraska.gov
402-471-0640

Jamie Reinke, PE, CFM

jamie.reinke@nebraska.gov
402-471-3957

Chuck Chase, CFM

chuck.chase@nebraska.gov
402-471-9422

Anna Crist

anna.crist@nebraska.gov
531-510-2320

Erin Wendt

erin.wendt@nebraska.gov
402-471-0572

Michele York

michele.york@nebraska.gov
402-471-1214