

Bottineau Municipal Code Revised

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Chapter Ten

Health

ARTICLE 1 – Board of Health

10.0101 Members

The Board of Health is composed of the City governing body, which shall have and exercise all powers under the law.

10.0102 Regulations

The Board of Health may make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety. The Board of Health shall appoint a local health officer.

ARTICLE 2 – Local Health Officer

10.0201 Duties of Local Health Officer

1. The First District Health Unit out of Minot, North Dakota shall serve as the local health officer, subject to removal for cause by the governing body or the district board of health.

2. Within the jurisdiction of the board of health, a local health officer:

- (A) Shall keep a record of the official acts of the local health officer.
- (B) Shall enforce every law and rule relating to preservation of life and health of individuals.
- (C) May exercise the powers and duties of the board of health under the supervision of the board of health.
- (D) May make sanitary inspections of any place within the jurisdiction in which the local health officer finds a probability a health-threatening condition exists.
- (E) May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
- (F) May enforce school cleanliness; inspect any schools that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.
- (G) May take any action necessary for the protection of public health and safety.
- (H) May determine when quarantine and disinfection is necessary for the safety of the public. The local health officer may establish quarantines consistent with procedures provided under Chapter 23-07.6 of the North Dakota Century Code, and perform any acts required for disinfecting when necessary.
- (I) May maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.
- (J) May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.

3. A local health officer may request the assistance of a County Sheriff or City Health Department in the same manner as provided under Subsection 3 of Section 23-35-09 of the North Dakota Century Code.

10.0202 Penalty

Any person who violates any order, ordinance, or rule prescribed by the board of health or local health officer or any rule adopted under this chapter shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days or both such fine and imprisonment.

ARTICLE 3 – Garbage, Refuse, Rubbish

10.0301 Definitions

For the purpose of this article the following words shall have the meanings given herein:

1. “Ashes” is the residue from burning wood, coal, coke or other combustible materials.
2. “Garbage” is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
3. “Refuse” is all putrescible and non-putrescible solid wastes (except body wastes) including garbage, rubbish, ashes, street cleanings, dead animals, and solid market and industrial wastes.
4. “Rubbish” is non-putrescible solid wastes (excluding ashes) consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, glass, bedding, crockery and similar materials.

10.0302 Accumulation of Refuse Prohibited

No person shall permit or allow to accumulate in or about any yard, lot, place or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot, block or place, or premises owned and occupied by that person, any and all refuse, nor allow such yard, lot, place or premises to be or remain in such condition.

10.0303 Containers

1. All garbage and rubbish shall be placed by the person upon whose premises the same shall have been produced or accumulated, in watertight containers, which shall be protected against the access of flies and rodents.
2. Containers shall be placed in the alley of those lots having access to any alley and along the curb if no alley is accessible. The City may specify where containers shall be placed along the alley or street the convenience of collection.
3. The capacity shall not be more than thirty-five gallons each. In the case of buildings containing two or more apartments, the owner shall furnish one can for each apartment or a dumpster for the building. All loose paper such as newspaper, magazines, etc., will be placed in proper containers so as to prevent their blowing around when placed in the landfill dumping area. The container shall be replaced by the owner or occupant, when in the opinion of the City Superintendent, they are no longer suitable for use.

10.0304 Burning

No garbage, refuse or rubbish shall be burned within the City.

10.0305 Nuisance

Failure to comply with the provisions of Sections 10.0302, 10.0303 and 10.0304, shall constitute a public nuisance and be punishable as such under the section governing public nuisance as found in the Bottineau Municipal Ordinances.

10.0306 City Collection

All garbage and rubbish as defined herein shall be collected by the City or franchised contractor as frequently as is necessary to maintain and preserve community cleanliness and sanitation, except that this section shall not require the collection of garbage and rubbish where streets and alleys are in a temporary condition which makes it impossible to do so and in case of the failure to collect such garbage and rubbish, such failure shall not relieve the occupant of the premises from the payment of the garbage and rubbish collection fees hereinafter provided for.

10.0307 Fees

Fees for the collection of garbage rubbish by the City or franchised contractor and the disposal thereof may be set by resolution of the City governing body.

10.0308 Fees – Payment – Collection

1. In all places where water service is provided, fees for garbage and rubbish collection shall be added to and collected as a part of the water bill and collected by the City, but shall be separately stated on the bill. Garbage and rubbish collection bills shall be due and payable at the same time as the water bill, either monthly or quarterly as the case may be. If such charge is not paid when due the water service to such premises shall be shut off by the City in the same manner as is now provided for in the case of delinquency in payment of water bills and such service shall not be restored without the payment of the penalties now provided for.

2. In all places where water service is not provided, the fees for garbage and rubbish collection shall be paid to the City upon monthly or quarterly bills from the City. If the garbage and rubbish charge so established is not paid when due, such sum may be recovered by the City, in an action at law against the owner or occupant, or both, of the property so served, or pursuant to Bottineau ordinance providing a lien on premises for City services and collection.

3. No person within the City of Bottineau shall be permitted to refuse to accept such garbage and waste disposal service, and the failure of any person to receive such services shall not exempt him from the payment of charges hereinafter set forth, save and except only those persons residing in areas in which no waste collection service is provided for the entire area; and in such areas where no service is rendered, no charges shall be made.

4. The proceeds from the collection of the fees and charges shall be placed in the Garbage fund, and all of the expense of the City, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the Garbage fund.

10.0309 Disposal of Refuse not Collected by the City

Any person may haul his own garbage and refuse to the City Sanitary Landfill; provided, that he shall comply with the regulations of the City Council in relation to such sanitary landfill. Any person so hauling garbage and refuse shall nevertheless be obligated to the City for any charges levied by the City for garbage and refuse disposal. All other wastes as defined may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the City Council.

10.0310 Supervision

The collection, removal and disposal of garbage and rubbish under the provisions of this article shall be under the supervision, direction and control of the City Superintendent with the assistance of the City Council. The City Superintendent shall, unless there is a franchised contractor, appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the governing body.

10.0311 Rules and Regulations

The City Council shall prescribe such reasonable rules and regulations in connection with preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce and carry out the provisions of this chapter. The City Council may direct that the City garbage and rubbish collection crews shall not collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of the penalties of this code. In the absence of City collection crews the City Council may give instructions to a franchised contractor.

10.0312 Burying Garbage

No garbage, ashes, refuse or rubbish shall be buried upon any premises within the City.

10.0313 Disposal on Sanitary Landfill

It shall be unlawful for any person to haul or remove any garbage or rubbish or other waste material from any place within the City to any other place than to the City Sanitary Landfill.

10.0314 Operation as Public Utility - Patronage required of all property owners

1. The City garbage disposal system shall be operated as a public utility of the City.
2. It shall be the duty of all persons owning or occupying real estate within the City to use and patronize the municipal garbage disposal system exclusive of any other method or manner of disposal of garbage as defined by law, the provisions of this code and the other ordinances of this City, to comply with and conform to any and all of the provisions of this code and other ordinance of the City with reference to disposal of garbage, and to pay to the City the service costs, fees and charges established in connection therewith.

10.0315 Compulsory Use

For maintenance of the public health and sanitation, it is the intention hereof to make the collection, removal and disposal of garbage and rubbish in the City of Bottineau compulsory, and to fix charges therefore commensurate with the cost of collection and disposal of same.

10.0316 Car Bodies

Car bodies are not to be considered rubbish or refuse and shall not be deposited in the landfill operation. It is the responsibility of the owner to make his own arrangement for disposing of this type of unsightly object.

10.0317 Liquids

There shall be no liquid or semi-liquid wastes deposited or disposed of in the landfill operation. This includes oil or other liquids or substances not suitable for the landfill operation.

10.0318 Trees

Trees are to be considered rubbish; but no collection will be made of tree trunks or stumps unless arrangements are made with the City of Bottineau and an extra fee as established by the City of Bottineau.

10.0319 Appliances

Appliances are to be considered rubbish; but no collection will be made of appliances unless arrangements are made with the City of Bottineau and an extra fee as established by the City of Bottineau.

10.0320 Building Materials

Building materials such as stones, plaster, cement, dirt, concrete, and other construction material may be hauled to the landfill site with permission of the City Superintendent. Arrangements for such shall be made with the City, and an extra fee as established by the City of Bottineau paid by the owner, or contractor on the construction project.

10.0321 Dead Animal Carcasses

No dead carcasses will be allowed to be deposited in the sanitary landfill area. It is the responsibility of the owner to dispose of his own animals.

10.322 Ownership of Garbage

Ownership of refuse material set out for collection or deposited at the City disposal grounds shall be vested in the City. It shall be unlawful for any person, firm, or corporation to remove material from the City disposal grounds.

10.323 Sanitary Land Fill Site

The City shall operate one of its disposal sites strictly as a sanitary landfill operation. The basic operations will be the North Dakota State Department of health Regulations specifying the minimum requirements for storage, collection and disposal of all waste.

10.324 Storage of Garbage

Each property owner or occupant of any building or premises used for business purposes shall store all garbage originating on his premises in a covered container. Nothing in this chapter shall prevent an owner or occupant of any premises used for business purposes from constructing a building or closure for the storage of such garbage and so constructed and operated as to prevent the storage of such garbage from becoming a menace to the public's health.

ARTICLE 4 – Dangerous Buildings

10.0401 Dangerous Buildings Defined

1. For the purpose of this chapter, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

2. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

3. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

4. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, are more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

5. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

6. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

7. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

8. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

9. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

10. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

11. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

12. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.

13. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, or criminals; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful acts.

14. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

15. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any nonsupporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

16. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement,

inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or is such a condition that is likely to cause sickness or disease.

17. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.

18. Whenever any building or structure is in such a condition as to constitute a public nuisance because of their unsightly appearance and/or disrepair and/or other repairs, so as to be an eye sore for the neighborhood, and are not kept up with the standard of the area in which located, so as to cause injury to the property or persons of those living in adjacent areas.

19. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

10.0402 Standards for Repair, Vacation or Demolition

The following standards shall be followed in substance by the building inspector and the governing body in ordering repair, vacation or demolition:

1. If the “dangerous building” can be reasonably repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.

2. If the “dangerous building” is in such condition as to make it dangerous to the health, safety or general welfare of its occupant it shall be ordered to be vacated.

3. In all cases where a building cannot be repaired so that it will no longer exist in violation to the terms of this article it shall be demolished. In all cases where a “dangerous building” is a fire hazard existing or erected in violation of the terms of this article or any ordinance of the City or statute of the State of North Dakota, it shall be demolished.

10.0403 Dangerous Buildings – Nuisances

All “dangerous buildings” within the terms of Section 10.0401 of this article are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this ordinance or under state law.

10.0404 Duties of Building Inspector Regarding Dangerous Buildings

The building inspector, as designated by the City governing body, shall:

1. Inspect or cause to be inspected periodically, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a “dangerous building” within the terms of Section 10.0401 of this article.

2. Inspect any building, wall or structure about which any person to the effect files complaints that a building, wall, or structure is or may be existing in violation of this article.

3. Inspect any building, wall or structure reported by the fire or police departments of this City as probably existing in violation of the terms of this article.

4. Notify in writing the owner, occupant, lessee, mortgagee and all other persons having an interest in said building, as shown by the records in the office of the County Register of Deeds, of any building found by the building inspector to be a “dangerous building” within the standards set forth in Section 10.0401

of this article that: (a) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this article; (b) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty (30) days as may be necessary to do, or have done, the work or act required by the notice provided for herein.

5. Set forth in the notice provided for in Subsection 4 hereof a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a “dangerous building”, and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty (30) days, as is reasonable.

6. Report to the City governing body any noncompliance with the “notice” provided for in Subsection 4 and 5 hereof.

7. Appear at all hearings conducted by the City governing body and testify as to the conditions of “dangerous buildings”.

8. Place a notice on all “dangerous buildings” reading as follows: “This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee or mortgagee of this building and all other persons having an interest in said building as shown by the records of the County Register of Deeds. It is unlawful to remove this notice until such notice is complied with.”

10.0405 Duties of the City Governing Body Regarding Dangerous Buildings

The City governing body shall:

1. Upon receipt of a report of the building inspector as provided for in Section 10.0404, Subsection 6 hereof, give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the County Register of Deeds, to appear before it on the date specified in the notice to show cause why the building or structure reported to be a “dangerous building” should not be repaired, vacated or demolished in accordance with the statement of particulars set forth in the building inspector’s notice provided for herein in Section 10.0404(5).

2. Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the County Register of Deeds shall offer relative to the “dangerous building”.

3. Make written findings of fact from the testimony offered pursuant to Subsection 2 as to whether or not the building in question is a “dangerous building” within the terms of Section 10.0401 hereof.

4. Issue an order based upon findings of fact made pursuant to Subsection 3 commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the County Register of Deeds to repair, vacate or demolish any building found to be a “dangerous building” within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said “dangerous building”.

10.0406 Failure to Comply with Decision of the City Governing Body

If the owner, occupant, mortgagee or lessee fails to comply with the order of the City governing body or fails to appeal to the District Court within thirty (30) days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated or demolished as ordered by the City governing body and shall cause the costs of such repair, vacation or demolition to be charged against the land on which said building existed by special assessment, or as a municipal; lien, or shall cause

said cost of removal to be levied as a special tax against the land upon which said building stands or did stand or to be recovered in a suit at law against the owner.

10.0407 Violations – Penalty for Disregarding Notices or Orders

1. The owner of any “dangerous building” who shall fail to comply with any notice or order to repair, vacate to demolish said building given by any person authorized by this article to give such notice or order shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding five hundred dollars (\$500.00) for each offense and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as above stated shall be deemed a separate offense.

2. The occupant or lessee in possession who fails to comply with any notice to vacate or who fails to repair said building in accordance with any notice given as provided for in this article shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding five hundred dollars (\$500.00) for each offense and every day subsequent to such notice in which the said occupant or lessee shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

3. Any person removing the notice provided for in Section 10.0404, Subsection 8 thereof shall be guilty of an infraction and upon conviction shall be fined not exceeding five hundred dollars (\$500.00) for each offense.

10.0408 Duties of the City Attorney Regarding Dangerous Buildings

The City attorney shall:

1. Prosecute all persons failing to comply with the terms of the notices provided for herein in Section 10.0404, Subsections 4 and 5 and the order provided for in Section 10.0405, Subsection 4.

2. Appear at all hearings before the City governing body in regard to “dangerous buildings”.

3. Take such other legal action as is necessary to carry out the terms and provisions of this article.

10.0409 Where Owner Absent from the City

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the City, all notice or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the land records of the County Register of Deeds to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

10.0410 Duties of Fire, Police and Health Departments Regarding Dangerous Buildings

All employees of the fire, police and health departments shall make written reports to the building inspector of all buildings or structures which are, may be or are suspected to be “dangerous buildings” as herein defined.

10.0411 Appeal

The City governing body shall serve upon the owner, occupant, mortgagee, lessee and all other persons having an interest in any building ordered to be repaired, vacated or demolished, a copy of its order. The owner, occupant, mortgagee or lessee shall thereafter have thirty (30) days from the date of the service of such order in which to appeal from such order to the District Court or to take such other legal steps to enjoin the enforcement of such order.

ARTICLE 5 - Demolitions of Building or Structure

10.0501 Demolitions

In any instance where a structure or building is demolished, for any reason, the following shall apply:

1. All material and debris resulting from said demolition, including foundations and floors both above and below grade, shall be removed from the property on which the structure or building existed and disposed of at an approved landfill site.
2. All water and sewer lines serving said structure or building shall be disconnected at the same point where they are connected to the City main or in a manner approved by the City Superintendent.
3. The building site shall be filled and leveled to an elevation approximately equal to the grade surrounding said site.
4. The demolition contractor or his agent shall be responsible for removal and disposal of all demolition material and debris including subgrade foundations and floors, filling of existing excavation, leveling of all fill material and for the disconnecting of any water and/or sewer services lines serving said structure or
5. Financial responsibility rest with landowner where demolition occurred unless otherwise specified by agreement with the City of Bottineau and landowner.

10.0502 Costs Assessed to Property

When the City has effected the demolition or has paid for the demolition of any structure, the actual cost thereof, if not paid by the landowner prior thereto, shall be challenged and assessed against the property as provided for in Section 7.0501.

10.0503 Penalties

Any person who is convicted of violation or of failing to comply with any of the provisions of this ordinance is guilty of an infraction as set out in §12.1-32-01(7) of the North Dakota Century Code, and may be punished by a fine of not more than \$1,000.00. The Court shall impose a minimum fine of not less than \$100.00 for each violation.

ARTICLE 6 - Reportable Diseases

10.0601 Adoption of State Law

The provisions of North Dakota Century Code, §23-07-01 et. Seq. and amendments thereto relating to contagious and reportable diseases are hereby adopted and made a part of this code.

ARTICLE 7 - Water Pollution

10.0701 Fouling of Public Water

1. No person shall deposit or place or cause to be deposited or placed any dead animal or other refuse matter offensive to the sight or smell or deleterious to health, upon the banks or in the waters of any pond or stream within the City.

2. The provisions of this section shall be construed to include privies located nearer than thirty feet from the top of the bank of such pond or stream; provided, that this section shall not be construed to prohibit further, the swimming in natural water of waterfowl; and provided further, that in any case where it is impossible to construct such privies father than thirty feet, the board of health of the City may upon request approve of a concrete or a similar construction of such enclosure such as to render them safe from contamination of pond or stream water.

ARTICLE 8 - Flood Damage Prevention

10.0801 Statutory Authorization

The Legislature of the State of North Dakota has in North Dakota Century Code delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Bottineau, North Dakota, does ordain as follows:

10.0802 Findings of Fact

1. The flood hazard areas of Bottineau are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

10.0803 Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. To protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that potential buyers are notified that property is in a flood area.

10.0804 Methods of Reducing Flood Losses

1. In order to accomplish its purposes, this ordinance uses the following methods:

2. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;
3. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
4. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
5. Control filling, grading, dredging and other development which may increase flood damage; and
6. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other lands.

10.0805 Definitions

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

1. Alluvial Fan Flooding – means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of corrosion, sediment transport, and deposition, and unpredictable flow paths.
2. Apex – means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.
3. Area of Shallow Flooding – means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
4. Area of Special Flood Hazard – is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any give year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.
5. Base Flood – means the flood having a one percent change of being equaled or exceeded in any given year.
6. Basement – means any area of the building having its floor sub-grade (below ground level) on all sides.
7. Critical Feature – means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.
8. Development – means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structure, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
9. Elevated Building – means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the

elevated flood elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AB, A, A99, AO, AH, B, C, X, and D, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, “elevated building” also includes a building otherwise meeting the definition of “elevated building,” even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.

10. Existing Construction – means for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

11. Existing Manufactured Home Park or Subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

12. Flood or Flooding – means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (A) The overflow of inland or tidal waters.
- (B) The unusual and rapid accumulation or runoff of surface waters from any source.

13. Flood Insurance Rate Map (FIRM) – means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

14. Flood Insurance Study – is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

15. Floodplain or Flood-Prone Area – means any land area susceptible to being inundated by water from any source (see definition of flooding).

16. Floodplain Management – means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

17. Floodplain Management Regulations – means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

18. Flood Protection System – means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

19. Flood Proofing – means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

20. Floodway (Regulatory Floodway) – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

21. Functionally Dependent Use – means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

22. Highest Adjacent Grade – means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

23. Historic Structure – means any structure that is:

- (A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (D) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (I) By an approved state program as determined by the Secretary of the Interior or;
 - (II) Directly by the Secretary of the Interior in states without approved programs.

24. Levee – means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

25. Levee System – means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

26. Lowest Floor – means the lowest floor of the lowest enclosed area (including basement). An unfurnished or flood resistant enclosure, unable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

27. Manufactured Home – means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

28. Manufactured Home Park or Subdivision – means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

29. Mean Sea Level – means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

30. New Construction – means, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

31. New Manufactured Home Park or Subdivision – means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

32. Recreational Vehicle – means a vehicle which is:

(A) Built on a single chassis;

(B) 400 square feet or less when measured at the largest horizontal projections;

(C) Designed to be self-propelled or permanently tow able by a light duty truck; and

(D) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

33. Start of Construction – (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

34. Structure – means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

35. Substantial Damage – means damage of any origin sustained by a structure whereby the cost of restoring the structure to it before damaged condition would equal or exceeds 50 percent of the market value of the structure before the damage occurred.

36. Substantial Improvement – means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- (A) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
- (B) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

37. Variance – is a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirement see Section 60.6 of the National Flood Insurance Program regulations).

38. Violation – means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

39. Water Surface Elevation – means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

10.0806 Lands to Which This Ordinance Applies

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Bottineau.

10.0807 Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled “The Flood Insurance Study for Bottineau, dated September 9, 2009 with accompanying Flood Insurance Rate Map and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

10.0808 Establishment of Development Permit

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

10.0809 Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

10.0810 Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, which ever imposes the more stringent restrictions shall prevail.

10.0811 Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

10.0812 Warning and Disclaimer or Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

10.0813 Designation of the Floodplain Administrator

The City of Bottineau Building Inspector is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate section of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

10.0814 Duties and Responsibilities of the Floodplain Administrator

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
2. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
3. Review, approve or deny all applications for development permits required by adoption of this ordinance.
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (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.
6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is North Dakota State Water Commission, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

8. When base flood elevation data has not been provided in accordance with , Section 10.0807, floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated 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 more than one foot at any point within the community.

10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

10.0815 Permit Procedures

Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures.

2. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed.

3. A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of Section 10.0818(2).

4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

5. Maintain a record of all such information in accordance with "Section 10.0814(1).

6. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

(A) The danger to life and property due to flooding or erosion damage.

(B) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(C) The danger that materials may be swept onto other lands to the injury of others.

(D) The compatibility of the proposed use with existing and anticipated development.

- (E) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (F) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems.
- (G) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
- (H) The necessity to the facility of a waterfront location, where applicable.
- (I) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- (J) The relationship of the proposed use to the comprehensive plan for that area.

10.0816 Variance Procedures

1. The Appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this ordinance.

2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.

6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 10.0815(2) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increase.

7. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Section 10.0803).

8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

9. 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.

10. Prerequisites for granting variances:

- (A) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (B) Variances shall only be issued upon:
 - (I) Showing a good and sufficient cause;
 - (II) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - (III) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (C) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest flood elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11. Variance may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- (A) The criteria outlined in Section 10.0816(1)-(9) are met, and
- (B) 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.

10.0817 General Standard

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrostatic loads, including the effects of buoyancy.

2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

3. All new construction or substantial improvement shall be constructed with materials resistant to flood damage.

4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other services facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during condition of flooding.

5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood water.

7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

10.0818 Specific Standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in (i) Section 10.0807, (ii) Section 10.0814(8), or (iii) Section 10.0819(3), the following provisions are required:

1. Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor, (including basement), elevated above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 10.0815 (1)a., is satisfied.

2. Nonresidential Construction - new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, (including basement) elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, be designed so that below the base flood level 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 registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

3. Enclosures – new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which 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.
- (B) The bottom of all openings shall be no higher than one foot above grade.
- (C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. Manufactured Homes -

- (A) Require that all manufactured homes to be placed with Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- (B) Require that manufactured homes that are placed or substantially improved in Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park

or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(C) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community’s FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(I) The lowest floor of the manufactured home is at or above the base flood elevation, or

(II) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

5. Recreational Vehicles – Require that recreational vehicles placed on sites within Zones A1-30, AH and AE on the community’s FIRM either:

(A) Be on the site for fewer than 180 consecutive days.

(B) Be fully licensed and ready for highway use, or

(C) Meet the permit requirements of Section 10.0815(1), and the elevation and anchoring requirements for “manufactured homes” in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

10.0819 Standards for Subdivision Proposals

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 10.0812, 10.0803 and 10.0804 of this ordinance.

2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Section 10-0808; Section 10.0815; and the provisions of Section of this ordinance.

3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 10.0807 or Section 10.0814(8) of this ordinance.

4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

10.0820 Standards for Areas of Shallow Flooding (AO/AH Zones)

Located within the areas of special flood hazard established in Section 10.0807, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRMS (at least two feet if no depth number is specified).
2. All new construction and substantial improvement of non-residential structures:
 - (A) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in fee on the community's FIRM (at least two feet if no depth number is specified), or;
 - (B) Together with attendant utility and sanitary facilities be designed so that below the base flood level 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 of effects of buoyancy.
3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 10.0815(1), are satisfied.
4. Require within Zones AH or AO adequate drainage paths around structures of slopes, to guide flood waters around and away from proposed structures.

10.0821 Floodways

Floodways – located within areas of special flood hazard established in Section 10.0807, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the propose encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. If Section 10.0821(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions.
3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

10.0822 Penalties for Noncompliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who

violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined no more than \$1,000.00 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Bottineau from taking such other lawful action as is necessary to prevent or remedy any violation.

CERTIFICATION

It is hereby found and declared by _____ that severe flooding has occurred in
(Community)
the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective immediately.

Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: _____
(Community official)

PASSED: _____
(Date)

I, the undersigned, _____, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the _____
(Community)
at a regular meeting duly convened on _____
(Date)

(Secretary or responsible person)

ARTICLE 9 – Drones (personal, recreational, hobby & model drones)

10.0901 Definitions

Under this article:

1. “Aircraft” means any contrivance invented, used, or designed to navigate or fly in the air.
2. “Altitude” means the height of an aircraft above the surface of the land or water below it.

3. "City air space" means the space on a vertical plane perpendicular to and above the land, water, and waterways within the jurisdiction of the city of Bottineau.
4. "Model Drone" (hereafter referred to as "drone") means an aircraft that is:
 - A. Operated without the possibility of direct human interventions from within or on the aircraft, and
 - B. Weighs less than 55 pounds at the time of the operation, including the weight of any payload or fuel. The term "model drone" does not include "toy aircraft" or "public aircraft" as defined herein.
5. "Firearm" has the meaning as ascribed to the term in NDCC section 62.1-01-01(3).
6. "Hobby or recreational purposes" means a pursuit engaged in for relaxation, and not for business purposes, and not for compensation or hire.
7. "Open air assembly unit" means to pilot, steer, direct, fly or manage an aircraft through the air whether from within the aircraft or remotely. The term "operate" includes managing or initiating a computer system that pilots, steers, directs, flies, or manages an aircraft.
8. "Public aircraft" has the meaning ascribed to the term in 42 U.S.C. 40102.
9. "Surveillance" means the gathering, without permission and in a manner that is offensive to a reasonable person, of visual images, physical impressions, sound recordings, data, or other information involving:
 - A. An active crime, accident or fire scene or investigation; or
 - B. The private, personal, business, or familial activities of another person, business, or entity, or that otherwise intrudes upon the privacy, solitude, or seclusion of another person, business, or entity regardless of whether a physical trespass onto real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity, or into the airspace above real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity occurs in connection with such surveillance.
10. "Toy aircraft" means:
 - A. A glider or hand-tossed aircraft that is not designed for and is incapable of sustained flight; or
 - B. An aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire.
11. "Weapon" means any instrument, article or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing harm or damage to any person, or property, including, but not limited to, firing a bullet, projectile, or laser.

The Airport Manager may acknowledge drone operation in city airspace for hobby or recreational purposes only, except that it shall be unlawful to operate a drone:

1. Within one (1) mile of the Bottineau Municipal Airport and within the 10,000 feet non-precision approach areas to its runways. The protected airspace hereafter shall be referred to as the "Airport Drone No Fly Zone" A map of such Airport Drone No Fly Zone shall be displayed at the airport and filed with the City Auditor's Office;
2. Over any person who is not involved in the operation of the drone, without such person's consent;
3. Over vehicular traffic;
4. Over property that the operator does not own, unless the property owner consents and subject to any restrictions that the property owner may place on such operation;
5. Over property owned, leased, or operated by the city, including but not limited to airports, parks, lakes, public swimming pools, trails, parking lots, and buildings, except drones may be operated in conformity with this section;
6. By a child under thirteen (13) years of age when not accompanied by the child's parent or guardian or an adult designated by child's parent or guardian. The failure of a parent or designated adult to supervise an underage child's operation of a drone shall be a violation by the parent or designated adult;
7. At an altitude higher than 400 feet above ground level;
8. Outside the visual line of sight of the operator. The operator shall use his or her own natural vision, which includes vision corrected by standard eyeglasses or contact lenses, to maintain at all times an unobstructed view of the drone, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles designed to provide a "first person view" from the model or similar devices;
9. In a manner that interferes with, or fails to give way to, any manned aircraft or moving vehicle;
10. During the period between sunset and sunrise;
11. Whenever weather conditions impair the operator's ability to operate the drone safely; (i.e.: 1 mile visibility and clear of clouds)
12. Over any open air assembly unit, school, school yard, hospital, swimming pool, place of worship, or law enforcement building, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;
13. Within 500 feet of any electric generating facility, substation, or control center, or within 100 feet of any electric transmission facility, or within 25 feet of any electric distribution facility of any overhead wire, cable, conveyor, or similar equipment for the transmission of sounds or signal, or of heat, light or power, or data, upon or along any public way within the city, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation;

14. For the purpose of conduction of surveillance, unless expressly permitted by law;
15. With 0.08 percent or more by weight of alcohol in that person's blood or while under the influence of alcohol, any drug, any intoxicant, or any combination thereof, as set forth in NDCC section 38-08-01, which renders that person incapable of safely operating such drone;
16. That is equipped with a firearm or other weapon;
17. With intent to use such drone or anything attached to it to cause harm to persons or property; or
18. In a reckless, careless or negligent manner.

10.0903 Construction

1. Operations authorized by FAA and City:
 - A. Nothing in this article shall be construed to prohibit any person who is permitted by the Federal Aviation Administration, the City Council, the County Sheriff, the Fire Chief, the City Superintendent, the Airport Manager, or the Park District Manager to operate a drone in city airspace from conduction of such operations in accordance with the terms of such authorization and, if applicable, in accordance with this article
2. Operations prohibited by Federal or State regulation:
 - A. Nothing in this article shall be construed to authorize the operation of any drone in the city air space in violation of any federal or state law or rule promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration. This article shall not be construed to permit interference by any drone operation with air traffic or airport operations or in a manner less restrictive than Federal Aviation Administration guidelines regarding unmanned aerial systems and regulations regarding air space obstructions.
3. Governmental operations authorized:
 - A. Nothing in this article shall be construed to prohibit the use of a drone by a law enforcement agency or to conduct governmental operations by or on behalf of the City of Bottineau, Bottineau County, the State of North Dakota, or the Federal Government.
4. Negligence per se:
 - A. This article is enacted to protect the health and safety of all persons lawfully within the city or city air space and to prevent damage to persons & property. A violation of this article without legal excuse is negligence as a matter of law.

10.0904 Penalty

1. A violation of this article by an adult is a Class B misdemeanor. Any adult who violates this article shall be fined not less than \$100.00 nor more than \$1,500.00 for

each offense, nor jailed for more than thirty (30) days, or both. Each day that a violation continues shall constitute a separate and distinct offense.

2. A law enforcement office may seize a drone as evidence of a violation of this article. The drone thereafter shall be disposed of in accordance with state law for disposition of seized property.

First Reading: June 6, 2016

Second Reading: August 1, 2016

