

PART II - CODE OF ORDINANCES

Chapter 42 FLOODS

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Cross reference— Buildings and building regulations, ch. 18; streets, sidewalks and other public places, ch. 62; subdivisions and other divisions of land, ch. 66; utilities, ch. 82; waterways, ch. 90; zoning, app. A. [\(Back\)](#)

ARTICLE I. IN GENERAL

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Secs. 42-1—42-30. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION

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DIVISION 1. GENERALLY

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Sec. 42-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Appeal means a request for a review of the city's authorized agent's interpretation of any provision of this article or a request for a variance.

Area of shallow flooding means a designated AO or VO zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

Base flood means the flood having a one percent chance of being equalled or exceeded in any given year.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

Existing mobile home park or mobile home subdivision means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of the ordinance from which this article is derived.

Expansion to an existing mobile home park or mobile home subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

Flood and flooding mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

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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 one foot.

Habitable floor means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Mobile home means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

New construction means structures for which the start of construction commenced on or after the effective date of the ordinance from which this article is derived.

New mobile home park or mobile home subdivision means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of the ordinance from which this article is derived.

Start of construction means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 a 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 a part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, start of construction means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, the start of construction is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

Structure means a walled and roofed building or mobile home that is principally above ground.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (i) before the improvement or repair is started, or (ii) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

Variance means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

(Code 1989, § 8.46)

Cross reference— Definitions generally, § 1-2.

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Sec. 42-32. Findings of fact.

- (a) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(Code 1989, § 8.41)

Sec. 42-33. Purpose of article.

It is the purpose of this article 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) 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 areas of special flood hazard;
- (6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Code 1989, § 8.42)

Sec. 42-34. Methods of reducing flood losses.

In order to accomplish its purpose, this article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and

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- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Code 1989, § 8.43)

Sec. 42-35. Lands to which article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Code 1989, § 8.51)

Sec. 42-36. Basis for establishing areas of special flood hazard.

The areas of special flood hazard are identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) Entitled "Muskegon County, Michigan (All Jurisdictions)" and dated 7/6/2015 and the Flood Insurance Rate Map(s) (FIRMS) panel number(s) of 26121C; 0019D, 0020D, 0036D, and 0038D dated 7/6/2015 are adopted by reference for the purposes of administration of the Michigan Construction Code, and declared to be a part of Section 1612.3 of the Michigan Building Code, and to provide the content of the "Flood Hazards" section of Table R301.2(1) of the Michigan Residential Code. The flood insurance study is on file at the office of the Zoning Administrator, City Hall, 8778 Ferry Street, Montague, Michigan.

(Code 1989, § 8.52; Ord. No. 270, 5-18-2015)

Sec. 42-37. Compliance with applicable regulations.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations.

(Code 1989, § 8.53)

Sec. 42-38. Existing covenants and restrictions; conflicting regulations.

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

(Code 1989, § 8.54)

Sec. 42-39. Interpretation of article.

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the city council; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

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(Code 1989, § 8.55)

Sec. 42-40. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Code 1989, § 8.56)

Secs. 42-41—42-60. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT ^[2]

[Sec. 42-61. Enforcing officer.](#)

[Sec. 42-62. Development permit.](#)

[Sec. 42-63. Variances; appeal board.](#)

[Secs. 42-64—42-80. Reserved.](#)

Sec. 42-61. Enforcing officer.

- (a) The authorized agents of the city are hereby appointed to administer and implement this article by granting or denying development permit applications in accordance with its provisions.
 - (1) *Agency designated.* Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, the Zoning Administrator and Building Inspector for the City of Montague are hereby designated as the enforcing agency to discharge the responsibility of the City of Montague under Act 230, of the Public Acts of 1972, as amended, State of Michigan. The City of Montague assumes responsibility for the administration and enforcement of said Act throughout the corporate limits of the community adopting this ordinance
 - (2) *Code appendix enforced.* Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, Appendix G of the Michigan Building Code shall be enforced by the enforcing agency within the jurisdiction of the community adopting this ordinance.
- (b) Duties of the authorized agents of the city shall include, but not be limited to the following:
 - (1) *Permit review.*
 - a. Review all development permits to determine that the permit requirements of this article have been satisfied.

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- b. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which proper approval is required.
 - c. Review all development permits to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard. For purposes of this article, the term "adversely affects" means 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.
- (2) *Use of other base flood data.* When base flood elevation data has not been provided in accordance with section 42-36, the authorized agents of the city shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer section 42-82(1) and section 42-82(2).
- (3) *Information to be obtained and maintained.*
- a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures.
 - b. For all new or substantially improved floodproofed structures, verify and record the actual elevation (in relation to mean sea level), and maintain the floodproofing certifications required in section 42-62(b)(3).
 - c. Maintain for public inspection all records pertaining to the provisions of this article.
- (4) *Duties regarding alteration of watercourses.*
- a. Notify adjacent communities and the state department of natural resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - b. Require that maintenance be provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.
- (5) *Interpretation of FIRM boundaries.* Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 42-63.

(Code 1989, §§ 8.62, 8.63; Ord. No. 271, 6-15-2015)

Cross reference— Officers and employees, § 2-91 et seq.

Sec. 42-62. Development permit.

- (a) *Required.* A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 42-36.
- (b) *Application.* Application for a development permit may include, but shall not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question, existing or proposed structures, fill, storage of materials, and drainage facilities, and their location. Specifically, the following information is required:
 - (1) Elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures;
 - (2) Elevation, in relation to mean sea level, to which any structure has been floodproofed;

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- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 42-82(2); and
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(Code 1989, § 8.61)

Sec. 42-63. Variances; appeal board.

- (a) The construction board of appeals as established by the city shall hear and decide appeals and requests for variances from the requirements of this article.
- (b) The construction board of appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the authorized agents of the city in the enforcement or administration of this article.
- (c) Those aggrieved by the decision of the construction board of appeals, or any taxpayer, may appeal such decision to the circuit court, as provided by law.
- (d) In passing upon such applications, the construction board of appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Generally, 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 subsections (d)(1) through (11) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- (e) Upon consideration of the factors listed in subsection (d) of this section and the purposes of this article, the construction board of appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

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- (f) The authorized agents of the city shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (g) Conditions for variances are as follows:
- (1) 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 subsection.
 - (2) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor 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.

(Code 1989, §§ 8.64, 8.65)

Secs. 42-64—42-80. Reserved.

FOOTNOTE(S):

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Cross reference— Administration, ch. 2. [\(Back\)](#)

DIVISION 3. FLOOD HAZARD REDUCTION ^[3]

[Sec. 42-81. General standards.](#)

[Sec. 42-82. Areas where flood elevation known.](#)

[Sec. 42-83. Floodways.](#)

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Sec. 42-81. General standards.

In all areas of special flood hazard the following standards are required:

(1) *Anchoring.*

- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- b. All mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 1. Over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, with mobile homes less than 50 feet long requiring one additional tie per side;
 2. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with mobile homes less than 50 feet long requiring four additional ties per side;
 3. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 4. Any additions to the mobile home be similarly anchored.

(2) *Construction materials and methods.*

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) *Utilities.*

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) *Subdivision proposals.*

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;
- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
- d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contains at least 50 lots or five acres (whichever is less).

(Code 1989, § 8.71)

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Sec. 42-82. Areas where flood elevation known.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in section 42-36 or section 42-61(b)(2), 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 to or above the base flood elevation.
- (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 the level of the base flood elevation, or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the authorized agents of the city as set forth in section 42-61(b)(3)b.
- (3) *Mobile homes.*
 - a. Mobile homes shall be anchored in accordance with section 42-81(1)b.
 - b. For new mobile home parks and mobile home subdivisions, for expansions to existing mobile home parks and mobile home subdivisions, for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, and for mobile homes not placed in a mobile home park or mobile home subdivision, the following are required:
 1. Stands or lots shall be elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
 2. Adequate surface drainage and access for a hauler shall be provided; and
 3. In the instance of elevation on pilings:
 - i. Lots shall be large enough to permit steps;
 - ii. Piling foundations shall be placed in stable soil no more than ten feet apart; and
 - iii. Reinforcement shall be provided for pilings more than six feet above the ground level.
 - c. No mobile home shall be placed in a floodway, except in an existing mobile home park or existing mobile home subdivision.

(Code 1989, § 8.72)

Sec. 42-83. Floodways.

Located within areas of special flood hazard established in section 42-36 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and erosion potential, the following provisions apply:

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- (1) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this division.
- (3) Placement of any mobile homes is prohibited, except in an existing mobile home park or existing mobile home subdivision.

(Code 1989, § 8.73)

FOOTNOTE(S):

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State Law reference— Unlawful construction in floodplain, MCL 324.3108. [\(Back\)](#)