

Ordinance Language

Commentary

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

1.1 **Statutory Authorization:** The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter [394/462] delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the (City Council/ Board of Commissioners) of _____, Minnesota, does ordain as follows.

117-180
(a)(1)

Mandatory language. The zoning enabling statute reference is Chapter 394 for counties and Chapter 462 for cities and townships. "Governing body" is the City Council or County or Township Board.

1.2 Purpose:

1.21 This ordinance regulates development in the flood hazard areas of _____. These flood hazard areas are subject to periodic inundation, which may result 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. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

117-180
(b)

Mandatory language

1.22 National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

1.23 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

1.23 is optional language referencing the natural beneficial functions of floodplains.

SECTION 2.0 GENERAL PROVISIONS

2.1 **How to Use This Ordinance:** This ordinance adopts the floodplain maps applicable to (Community) and includes three floodplain districts: Floodway, Flood Fringe, and General Floodplain.

2.11 Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in Sections 4 or 5 will apply, depending on the location of a property.

2.12 Locations where Floodway and Flood Fringe districts are not delineated on the floodplain maps are considered to fall within the General Floodplain district. Within the General Floodplain district, the Floodway District standards in Section 4 apply unless the floodway boundary is determined, according to the process outlined in Section 6. Once the floodway boundary is determined, the Flood Fringe District standards in Section 5 may apply outside the floodway.

The types of floodplain zones present in a community will vary, depending on hydrologic conditions and the level of detail of the applicable maps.

If the General Floodplain District (the A zone or other zones without a defined floodway) is not present within the community, references to it, including the provisions of Section 6, may be deleted but Section 6 should be "reserved for future use" (i.e., in case a future annexation adds an A zone).

2.2 **Lands to Which Ordinance Applies:** This ordinance applies to all lands within the jurisdiction of (Community) shown on the Official Zoning Map and/or the attachments to the map as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts.

117-181
(a)

2.21 The Floodway, Flood Fringe and General Floodplain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any

2.21 is optional – if the community has a zoning ordinance – as most do – it's helpful to define these districts as overlay districts. If

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other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.

not, then delete this statement and other overlay references.

117-181
(b)

2.3 **Incorporation of Maps by Reference:** The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes the Flood Insurance Study for _____ County, Minnesota, and Incorporated Areas, dated _____ and the Flood Insurance Rate Map panels enumerated below, dated _____, all prepared by the Federal Emergency Management Agency. These materials are on file in the (list location where maps will be filed – i.e., City Clerk’s office).

Mandatory language. Each community must adopt the Flood Insurance Study and specific map panels that encompass its boundaries. Under Minnesota Rules 6120.5700, these materials are considered attachments to the Zoning Map.

(list all map panels here)

Listing of maps will vary by jurisdiction and map type.

- For communities with older maps, such as Flood Hazard Boundary Maps, in addition to Flood Insurance Rate Maps, these maps should also be listed in Section 2.3.
- For counties, the map index may be used in lieu of listing all the map panels individually.
- Cities may need to adopt other map panels to encompass areas that may be annexed in the future. Counties and townships may need to adopt city map panels to encompass areas that may be detached from cities. See Section 2.10.

117-181
(c)

2.4 **Regulatory Flood Protection Elevation:** The regulatory flood protection elevation (RFPE) is an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

Optional - Reiterates information in the (mandatory) definition of this term in Section 2.9. The RFPE can be increased beyond one foot to provide enhanced flood protection.

In A-O zones, add more detailed language: “Within the AO Zone, the RFPE is an elevation no lower than [the number shown on the FIRM] above the highest adjacent grade of an existing structure or proposed structure or a proposed structural addition.”

2.5 **Interpretation:** The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.

117-181
(d)

2.51 Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.

2.52 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the (Planning Commission/Board of Adjustment) and to submit technical evidence.

117-181
(e)

2.6 **Abrogation and Greater Restrictions:** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances

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inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

117-181
(A)

2.7 **Warning and Disclaimer of Liability:** This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of (*Community*) or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

This statement not needed if already included in zoning ordinance

2.8 **Severability:** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

These definitions may already exist as part of zoning ordinance, but check for consistency.

2.9 **Definitions:** Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.

Definitions are mandatory unless otherwise indicated.

✓ 2.911 Accessory Use or Structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

ADD

2.912 Base Flood Elevation – The elevation of the “regional flood.” The term “base flood elevation” is used in the flood insurance survey.

Optional definition

✓ 2.913 Basement – any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

✓ 2.914 Conditional Use – a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:

Optional definition – check against zoning ordinance. Some local ordinances – and the state rules that apply to floodplains – use the older term “special use.”

(a) Certain conditions as detailed in the zoning ordinance exist.

(b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

~~2.915 Critical Facilities – facilities necessary to a community’s public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.~~

Optional definition – see the (optional) regulation of critical facilities in Section 3.25.

✓ 2.916 Development – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

This definition means that many land alteration activities are regulated and may require permits.

✓ 2.917 Equal Degree of Encroachment – a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

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<p><i>ADD</i> 2.918 Farm Fence – A fence as defined by Minn. Statutes Section 344.02, Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.</p>	<p><i>Optional definition – to be used if this type of farm fence is to be exempted from permit requirements</i></p>
<p>✓ 2.919 Flood – a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.</p>	<p><i>Optional definition</i></p>
<p>✓ 2.920 Flood Frequency – the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.</p>	<p><i>Optional definition</i></p>
<p>✓ 2.921 Flood Fringe – that portion of the floodplain outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for <u>(Local Unit)</u>, Minnesota.</p>	<p><i>For cities mapped as part of county-wide flood insurance study, the county name should be inserted here.</i></p>
<p>2.922 Flood Prone Area – any land susceptible to being inundated by water from any source (see “Flood”).</p>	<p><i>Optional definition – see provisions of Section 7 on flood prone areas</i></p>
<p>✓ 2.923 Floodplain – the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.</p>	
<p>✓ 2.924 Floodproofing – a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.</p>	
<p>✓ 2.925 Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.</p>	
<p><i>ADD</i> 2.926 Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor.</p>	
<p><i>ADD</i> 2.927 Manufactured Home – 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 attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”</p>	
<p>✓ 2.928 Obstruction – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.</p>	<p><i>Optional definition</i></p>
<p><i>ADD</i> 2.929 One Hundred Year Floodplain – lands inundated by the “Regional Flood” (see definition).</p>	
<p>✓ 2.930 Principal Use or Structure – all uses or structures that are not accessory uses or structures.</p>	<p><i>Optional definition</i></p>
<p>✓ 2.931 Reach – a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made</p>	<p><i>Optional definition</i></p>

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obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Likely will need to ADD

2.932 Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term "travel trailer/travel vehicle."

2.933 Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

2.934 Regulatory Flood Protection Elevation (RFPE) - an elevation not less than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

RFPE: The one-foot elevation is mandated by state law, but a higher elevation can yield increased protection.

2.935 Repetitive Loss: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

Repetitive Loss: This is an optional definition linked to the optional provision for repetitive loss properties in Section 11.16.

ADD

2.936 Special Flood Hazard Area – a term used for flood insurance purposes synonymous with "One Hundred Year Floodplain."

2.937 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Section 9.22 of this ordinance and other similar items.

2.938 Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.939 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

"Start of construction" and "historic structure" are defined in 44 Code of Federal Regulations 59.1.

- (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

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<p>enforcement official and which are the minimum necessary to assure safe living conditions.</p> <p>(b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" is as defined in 44 Code of Federal Regulations, Part 59.1.</p>	<p><i>"Historic structures" as defined in the CFR generally include sites listed on or eligible for the National Register of Historic Places and state- or locally-designated historic properties.</i></p>
<p>2.10. Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 2.3 above may include floodplain areas that lie outside of the corporate boundaries of the <u>(Community)</u> at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the <u>(Community)</u> after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.</p>	<p><i>The first Section 2.10 applies to cities only. It is optional but recommended – if not included, any annexation will trigger an amendment of the floodplain ordinance.</i></p>
<p>2.10. Detachments. The Flood Insurance Rate Map panels adopted by reference into Section 2.3 above will include floodplain areas that lie inside the corporate boundaries of municipalities at the time of adoption of this ordinance. If any of these floodplain land areas are detached from a municipality and come under the jurisdiction of (_____ County/ Township) after the date of adoption of this ordinance, the newly detached floodplain lands will be subject to the provisions of this ordinance immediately upon the date of detachment.</p>	<p><i>The second Section 2.10 applies only to counties or townships that exercise zoning authority. Counties may choose to adopt specific map panels or adopt the countywide map index.</i></p>
<p>SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS</p>	
<p>3.1 Districts:</p>	
<p>3.11 Floodway District. The Floodway District includes those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 2.3.</p>	<p><i>For lakes, ponds and wetlands, the floodway is usually administratively defined as the area at or below the Ordinary High Water Level. See DNR's Floodplain Information Sheet 1, http://files.dnr.state.mn.us/publications/waters/floodplain_management_fact_sheet_1.pdf</i></p>
<p>3.12 Flood Fringe District. The Flood Fringe District includes those areas designated as floodway fringe on the Flood Insurance Rate Map adopted in Section 2.3, as being within Zones AE, AO, or AH but being located outside of the floodway.</p>	<p><i>If a community has floodplain delineations on the FIRM for lakes, ponds and wetland <u>without</u> delineated floodways, contact DNR Floodplain Program staff for specific language.</i></p>
<p>3.13 General Floodplain District. The General Floodplain District includes those areas designated as Zone A or Zones AE, AO, or AH without a floodway on the Flood Insurance Rate Map adopted in Section 2.3.</p>	<p><i>Zones AO and AH are areas prone to flooding due to overland flow or small ponds, and are not typically found on most FIRMs. If not present, references in 3.12 and 3.13 can be deleted.</i></p>
<p>3.2 Compliance: Within the floodplain districts established in this ordinance, the use of any land, the use, size, type and location of structures on lots, the installation and maintenance of transportation, utility, water supply and waste treatment facilities, and the subdivision of land must comply with the terms of this ordinance and other applicable regulations. All uses not listed as permitted uses or conditional uses in Sections 4.0, 5.0 and 6.0, respectively, are prohibited.</p>	
<p>In addition, a caution is provided here that:</p>	
<p>3.21 New and replacement manufactured homes and certain recreational vehicles are subject to the general provisions of this ordinance and specifically Section 9.0.</p>	<p><i>Optional language in second paragraph and 3.21 -3.23 cross-references other sections of the ordinance.</i></p>
<p>3.22 Modifications, additions, structural alterations, normal maintenance</p>	

117-182 (a)

117-182 (b)

117-182 (b) (1)

117-182 (b) (2)

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<p>and repair, or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this ordinance and specifically Section 11.0.</p>		
<p>3.23 All structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.</p>	<p><i>Item 3.23 is mandatory based on 44 CFR 60(a)(3), from which this language is drawn.</i></p>	
<p>3.24 As-built elevations for elevated or floodproofed structures must be certified by ground surveys and flood-proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this ordinance and specifically as stated in Section 10.0 of this ordinance.</p>		
<p>3.25 Critical facilities, as defined in Section 2.915, are prohibited in all floodplain districts.</p>	<p><i>Optional but recommended language in 3.25 would prohibit critical facilities in all floodplain districts. This is a higher regulatory standard intended to keep critical infrastructure and concentrations of people out of floodplain areas.</i></p>	
<p>SECTION 4.0 FLOODWAY DISTRICT (FW)</p>		
<p>4.1 Permitted Uses: The following uses, subject to the standards set forth in Section 4.2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:</p>		
<p>117-183 (a)(1)</p>	<p>4.11 General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.</p>	<p><i>It is critical that the floodway be protected so that it can transport and store the waters of the regional (100-year) flood without increased flood heights or velocities or threats to public health and safety.</i></p>
<p>(a)(2)</p>	<p>4.12 Industrial-commercial loading areas, parking areas, and airport landing strips.</p>	<p><i>Note that communities are not required to adopt <u>all</u> of the listed uses, but must provide for <u>some</u> use of the floodway land. Other similar uses may be included in this section if they meet the standards in Section 4.2. If a community wishes to restrict all floodplain districts to only these permitted floodway uses, see the DNR's "Restrictive Ordinance."</i></p>
<p>(a)(3)</p>	<p>4.13 Open space uses, including but not limited to private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, hunting and fishing areas, and single or multiple purpose recreational trails.</p>	
<p>(a)(4)</p>	<p>4.14 Residential lawns, gardens, parking areas, and play areas.</p>	<p><i>4.15: Earlier versions of the DNR sample ordinances listed utility and transportation uses as conditional uses. In this version, these uses are permitted if DNR is notified and certain standards are met</i></p>
<p>4.15 Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit, and that the standards in Sections 4.41, 4.43(a) and 4.46 of this ordinance are met.</p>		
<p>4.2 Standards for Floodway Permitted Uses:</p>		
<p>(b)(1)</p>	<p>4.21 The use must have a low flood damage potential.</p>	<p><i>Higher standards for floodway protection could include limiting impervious coverage in the floodway, in order to facilitate infiltration of rainfall.</i></p>
<p>(b)(3)</p>	<p>4.22 With the exception of the uses listed in Section 4.15, the use must not obstruct flood flows or increase flood elevations and must not involve structures, fill, obstructions, excavations or storage of materials or equipment.</p>	
<p>4.23 Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time</p>		

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for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

4.3 **Conditional Uses:** The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 10.4 of this ordinance and further subject to the standards set forth in Section 4.4, if otherwise allowed in the underlying zoning district or any applicable overlay district.

117-183

(c)(1)

4.31 Structures accessory to the uses listed in 4.1 above and the uses listed in 4.32 - 4.37 below.

(c)(2)

4.32 Extraction and storage of sand, gravel, and other materials.

(c)(3)

4.33 Marinas, boat rentals, docks, piers, wharves, and water control structures.

(c)(5)

4.34 Storage yards for equipment, machinery, or materials.

(c)(6)

4.35 Placement of fill or construction of fences that obstruct flood flows. Farm fences, as defined in section 2.918, are permitted uses.

(c)(7)

4.36 Travel-ready recreational vehicles meeting the exception standards in Section 9.3.

(c)(8)

4.37 Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

4.4 **Standards for Floodway Conditional Uses:**

117-183 (d)(1)

4.41 All Uses. A conditional use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.

4.42 Fill; Storage of Materials and Equipment:

117-183 (d)(6) a.

(a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

117-183 (d)(4) a.

(b) Fill, dredge spoil, and other similar materials deposited or stored in the floodplain must be protected from erosion by vegetative cover, mulching, riprap or other acceptable method. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.

(d)(4) c.

(c) Temporary placement of fill, other materials, or equipment which would cause an increase to the stage of the 1% percent chance or regional flood may only be allowed if the (Governing Body) has approved a plan that assures removal of the materials from the floodway based upon the flood warning time available.

4.43 Accessory Structures:

117-183 (d)(5) a. (d)(5) b.

(a) Accessory structures must not be designed for human habitation.

(b) Accessory structures, if permitted, must be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:

Note that these conditional uses are optional for the community but, if allowed, must meet the standards in Sections 4.4. Communities are encouraged to select only those conditional uses that are appropriate for their conditions.

Optional statement in 4.35 allows typical farm fences such as barbed wire fences that don't obstruct flood flows as permitted uses. See also Section 10.21(c).

Section 4.36 is optional: we recommend treating recreational vehicles as conditional uses so that road access and warning systems are carefully reviewed to ensure public safety in times of flooding.

Note that flood control projects intended to remove areas from the floodway to allow development of single or multiple structures are not permitted unless a Letter of Map Revision (LOMR) can be obtained to change the floodway boundary. Contact DNR Floodplain Program staff for further information.

4.42 (a) and (b) must be included if deposition or storage of fill is allowed in the floodway

Alternative (c) is an optional alternative allowing temporary storage of fill or other materials that could increase flood stage, suitable for locations where adequate flood warning times will be available to allow removal of materials.

If accessory structures are to be allowed in the floodway, items (a) through (c) are required.

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(1) Whenever possible, structures must be constructed with the longitudinal axis parallel to the direction of flood flow; and

(2) So far as practicable, structures must be placed approximately on the same flood flow lines as those of adjoining structures.

117-183 (d)(5)c.

(c) Accessory structures must be elevated on fill or structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the State Building Code. All floodproofed accessory structures must meet the following additional standards:

(1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls; and

(2) Any mechanical and utility equipment in the structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed.

117-183 (d)(5)c.

(d) As an alternative, an accessory structure may be internally/wet floodproofed to the FP-3 or FP-4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment and does not exceed 576 square feet in size. A detached garage may only be used for parking of vehicles and limited storage. All structures must meet the following standards:

(1) To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and

(2) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

Subsection (d) is optional language allowing for wet floodproofing of small accessory structures that constitute a minimal investment.

4.44 Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters are subject to the provisions of Minnesota Statutes, Section 103G.245.

117-183 (d)(6) a.

4.45 A levee, dike or floodwall constructed in the floodway must not cause an increase to the 1% chance or regional flood. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.

(d)(6)(s)

4.46 Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

Optional provision providing notice that work in public waters requires a DNR permit.

SECTION 5.0 FLOOD FRINGE DISTRICT (FF)

5.1 Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections

If underlying zoning district(s) are present (as in most communities) the second sentence

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5.2. If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.	can be deleted.
5.2 Standards for Flood Fringe Permitted Uses:	
<p>117-184 (b)(1) 5.21 All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.</p>	<p>"Lowest floor" is defined as the lowest floor of the lowest enclosed area, including basements, crawl spaces, etc. See Section 2.926.</p>
<p>117-184 (b)(2) (a) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.</p> <p>(b) As an alternative to elevation on fill, an accessory structure that constitutes a minimal investment and that does not exceed 576 square feet in size may be internally floodproofed in accordance with Section 4.43.</p>	<p>(a) clarifies that ductwork must be elevated because it is seldom water-tight, which results in health hazards due to mold and mildew after flooding.</p> <p>(b) If an accessory structure exceeds 576 square feet, then FEMA will not allow internal floodproofing, and the structure must be elevated on fill or dry floodproofed in accordance with Section 4.44 (a) – (c).</p>
<p>117-184 (b)(3) 5.22 The cumulative placement of fill or similar material on a parcel must not exceed 1,000 cubic yards, unless the fill is specifically intended to elevate a structure in accordance with Section 5.21 of this ordinance, or if allowed as a conditional use under Section 5.33 below.</p>	<p>5.22 is an optional provision. Treating large volumes of fill as a conditional use allows communities to require an erosion control and emergency removal plan for uses such as sand and gravel mining or dredge spoil storage.</p>
<p>117-184 (b)(4) 5.23 The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.</p>	
<p>5.24 The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.</p>	
<p>117-184 (e)(4) 5.25 Fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.</p>	
<p>117-184 (e)(1) 5.26 All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning /emergency evacuation plan acceptable to the <u>(Governing Body)</u>.</p>	<p>Section 5.26 is optional, but is mandatory for subdivisions, which include manufactured home parks and recreational vehicle parks/campgrounds. See also Section 7.13.</p>
<p>117-184 (e)(2) 5.27 Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.</p>	
<p>117-184 (e)(3) 5.28 Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.</p>	<p>The Federal Emergency Management Agency (FEMA) has established criteria for removing the flood fringe designation for certain structures properly elevated on fill above the regional flood elevation. These standards, included in Technical Bulletin 10.01, require enhanced management and notification procedures. Contact DNR floodplain staff for</p>
<p>117-184 (e)(5) 5.29 Flood fringe developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.</p>	
<p>5.30 Manufactured homes and recreational vehicles must meet the</p>	

Ordinance Language

Commentary

standards of Section 9 of this ordinance.

further information.

117-184
(c)

5.3 **Conditional Uses:** The following uses and activities may be allowed as conditional uses, if allowed in the underlying zoning district(s) or any applicable overlay district, following the procedures in Section 10.4 of this ordinance. Conditional uses must meet the standards in Sections 5.24 through 5.30 and Section 5.4.

As with conditional uses in the floodway, conditional uses in the flood fringe are optional – communities should determine which of these uses are needed and appropriate in their floodplain areas.

5.31 Any structure that is not elevated on fill or floodproofed in accordance with Section 5.21 of this ordinance.

5.32 Storage of any material or equipment below the regulatory flood protection elevation.

5.33 The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with Section 5.21 of this ordinance.

5.4 Standards for Flood Fringe Conditional Uses:

5.41 The standards listed in Sections 5.24 through 5.30 apply to all conditional uses.

5.42 Basements, as defined by Section 2.913 of this ordinance, are subject to the following:

117-184
(d)(2)

(a) Residential basement construction is not allowed below the regulatory flood protection elevation.

(b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry floodproofed in accordance with Section 5.44 of this ordinance.

5.43 All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be floodproofed in accordance with the structurally dry floodproofing classifications in the State Building Code. Structurally dry floodproofing must meet the FP-1 or FP-2 floodproofing classification in the State Building Code, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures wet floodproofed to the FP-3 or FP-4 classification are not permitted.

117-184
(d)(3)

5.44 The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.

117-184 (d)(4)

(a) The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the regional (1% chance) flood event.

(b) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the (Governing Body).

Optional provisions to be used if placement of this amount of fill is regulated as a conditional use.

Ordinance Language

Commentary

(c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.

117-184
(cd) (5)

5.45 Storage of materials and equipment below the regulatory flood protection elevation must comply with an approved emergency plan providing for removal of such materials within the time available after a flood warning.

5.46 RESERVED FOR OPTIONAL ALTERNATIVE ELEVATION METHODS

Alternative elevation methods such as the use of stilts, pilings, parallel walls, etc. may be appropriate in certain circumstances, provided that communities are able to provide a high level of monitoring and enforcement. Contact DNR floodplain staff for the applicable language.

SECTION 6.0 GENERAL FLOODPLAIN DISTRICT (GF)

6.1 Permitted Uses:

117-185
(a) (4)

6.11 The uses listed in Section 4.1 of this ordinance, Floodway District Permitted Uses, are permitted uses.

(a) (2)

6.12 All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 6.2 below. Section 4.0 applies if the proposed use is determined to be in the Floodway District. Section 5.0 applies if the proposed use is determined to be in the Flood Fringe District.

If the General Floodplain District (the A zone or the AE, AO or AH zones without a defined floodway) is not present within the community, delete the contents of this section and retitle it "Reserved for Future Use" (i.e., in case a future annexation adds an A zone).

6.2 Procedures for Floodway and Flood Fringe Determinations:

6.21 Upon receipt of an application for a permit or other approval within the General Floodplain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.

6.22 If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in 6.23 below.

6.23 The determination of floodway and flood fringe must include the following components, as applicable:

117-185
(b) (2)

(a) Estimate the peak discharge of the regional (1% chance) flood.

(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within

State and federal rules establish standards for this determination but do not specify a procedure to be followed. (However, the community is required under 44 CFR 60.3(b)(4) to "obtain, review and reasonably utilize" base flood elevation and floodway data.) The procedure shown here is one that DNR suggests that communities follow. DNR Floodplain Program staff can assist communities in obtaining relevant data and completing the determination.

Ordinance Language

Commentary

the reach must be assumed in computing floodway boundaries.

- 6.24 The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.
- 6.25 Once the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this ordinance.

Federal rules require that communities assess the cumulative effects of floodway encroachments on both sides of a stream. Contact Floodplain Program staff for assistance in making this assessment.

SECTION 7.0 LAND DEVELOPMENT STANDARDS

- ~~7.1 **In General:** Recognizing that flood prone areas may exist outside of the designated floodplain districts, the requirements of this section apply to all land within *(Community)*.~~
- 7.2 **Subdivisions:** No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.
- 7.21 All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.
- 7.22 All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the *(Governing Body)*. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.
- 7.23 For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.
- 7.24 In the General Floodplain District, applicants must provide the information required in Section 6.2 of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.
- ~~7.25 If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:
 - (a) All such proposals are consistent with the need to minimize flood damage within the flood prone area,
 - (b) All public utilities and facilities, such as sewer, gas, electrical, and~~

Section 7.1 is optional – this and related provisions in 7.25 and 7.3 are designed to enable communities to manage flood risks in unmapped but flood-prone areas (i.e., wetlands, ditches, isolated basins). If these standards are not needed, Section 7 can be retitled “Subdivisions.”

The subdivision requirements in Section 7.21 – 7.24 are mandatory. These provisions can be integrated into a city or county subdivision ordinance, where one exists. Note that manufactured home and recreational vehicle parks are treated as subdivisions.

7.25 is optional, to be used in conjunction with 7.1.

Ordinance Language

Commentary

water systems are located and constructed to minimize or eliminate flood damage, and

- (c) Adequate drainage is provided to reduce exposure of flood hazard.

~~7.3 **Building Sites** If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:~~

- ~~(a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;~~
- ~~(b) Constructed with materials and utility equipment resistant to flood damage;~~
- ~~(c) Constructed by methods and practices that minimize flood damage; and~~
- ~~(d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

7.3 is optional, to be used in conjunction with 7.1.

SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

117-186
(a)

8.1 **Public Utilities:** All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

117-186
(b)

8.2 **Public Transportation Facilities:** Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 4.0 and 5.0 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

117-186
(c)

8.3 **On-site Water Supply and Sewage Treatment Systems:** Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they must not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the state's current statewide standards for on-site sewage treatment systems is considered to be in compliance with this Section.

Ordinance Language

Commentary

SECTION 9.0 MANUFACTURED HOMES, MANUFACTURED HOME PARKS, AND RECREATIONAL VEHICLES.

9.1 **Manufactured Homes:** New manufactured home parks and expansions to existing manufactured home parks are prohibited in any floodplain district. For existing manufactured home parks or lots of record, the following requirements apply:

This subsection is mandatory; the remainder of Section 9.0 is optional but recommended if manufactured home parks are located in any floodplain districts.

9.11 Placement or replacement of manufactured home units is prohibited in the Floodway District.

Section 9 is revised to recognize MN Department of Health rules (Section 4630.0200), which prohibit mobile home parks and recreational camping areas in flood-prone areas. Placement or replacement of manufactured home units may be allowed in existing manufactured home parks or on lots of record.

9.12 If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of Section 5 of this ordinance and the following standards.

(a) New and replacement manufactured homes must be elevated in compliance with Section 5 of this ordinance and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and 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 or local anchoring requirements for resisting wind forces.

(b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 7.22.

9.2 **Recreational Vehicles:** New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be treated as new structures meeting the requirements of this ordinance.

These exemption criteria are required if recreational vehicles are allowed within any floodplain district. If this section is not used, recreational vehicle placement must be explicitly prohibited in floodplain districts.

9.21 Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the following areas and meet the criteria listed in Section 9.22:

- (a) Individual lots or parcels of record.
- (b) Existing commercial recreational vehicle parks or campgrounds.
- (c) Existing condominium-type associations.

9.22 Criteria for Exempt Recreational Vehicles:

- (a) The vehicle must have a current license required for highway use.
- (b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.
- (c) No permanent structural type additions may be attached to the vehicle.
- (d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.
- (e) Accessory structures are not permitted within the Floodway

9.22(e) is optional. Recreational vehicles in existing campgrounds may be allowed within the Floodway District, if defined as a

117-187

117-187(c)

Ordinance Language

Commentary

District. Any accessory structure in the Flood Fringe District must be constructed of flood-resistant materials and be securely anchored, meeting the requirements applicable to manufactured homes in Section 9.22.

permitted or conditional use, but we recommend they be treated as a temporary use, without accessory structures and with an emergency plan in place.

~~(f) An accessory structure must constitute a minimal investment~~

~~9.23 Recreational vehicles that are exempt in Section 9.22 lose this exemption when development occurs on the site that exceeds a minimal investment for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as new structures subject to the elevation and floodproofing requirements of Section 5.0 of this ordinance. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle should flooding occur.~~

9.22 (f) and 9.23 are optional. Communities may apply a monetary limit such as \$500 as a threshold for a "minimal investment," recognizing that this threshold will vary from place to place.

SECTION 10.0 ADMINISTRATION

10.1 **Zoning Administrator:** A Zoning Administrator or other official designated by the (Governing Body) must administer and enforce this ordinance.

Many of the standards and procedures in this section are likely to exist in other parts of the community's zoning ordinance, and may be cross-referenced rather than repeated here. However, the community must be able to demonstrate that these procedures or comparable ones are in place.

10.2 Permit Requirements:

10.21 Permit Required. A permit must be obtained from the Zoning Administrator prior to conducting the following activities:

The term "Zoning Administrator" is used throughout this section for ease of reference, but in some communities the City Clerk or other official may fill this role.

- (a) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.
- (b) The use or change of use of a building, structure, or land.
- (c) The construction of a dam, fence, or on-site septic system, although a permit is not required for a farm fence as defined in this ordinance.
- (d) The change or extension of a nonconforming use.
- (e) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
- (f) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
- (g) Relocation or alteration of a watercourse - including new or replacement culverts and bridges), unless a public waters work permit has been applied for.
- (h) Any other type of "development" as defined in this ordinance.

The exemption for farm fences in (c) is optional.

10.22 Application for Permit. Permit applications must be submitted to the Zoning Administrator on forms provided by the Zoning Administrator. The permit application must include the following as applicable:

Any change in the course, current or cross-section of public waters requires a public waters work permit from the DNR under MN Stat. 103G.245.

This section may cross-reference any other permitting requirements in the zoning ordinance.

117-183
(a) + (b)

Ordinance Language

Commentary

- (a) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.
- (b) Location of fill or storage of materials in relation to the stream channel.
- (c) Copies of any required municipal, county, state or federal permits or approvals.
- (d) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

117-188
(b)(4)

10.23 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.

117-188
(b)(6)

10.24 Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.

117-188
(b)(7)

10.25 Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.

10.26 Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

10.27 Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

10.3 Variances:

10.31 Variance Applications. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and Section(s) _____ of the zoning ordinance/code.

117-188
(c)(3)

10.32 Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower

Cross-reference all sections of the zoning ordinance that regulate processing and review of variance applications. Section 10.3 only contains DNR/FEMA – mandated regulatory & notification provisions.

Communities that administer zoning ordinances (including floodplain ordinances)

Ordinance Language

Commentary

degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.

must establish a board of adjustment to hear appeals of the ordinance, including variance requests. In many communities, the city council, county board, or planning commission serves as the board of adjustment. If a community does not have existing variance procedures or a board of adjustment, contact Floodplain Program staff for sample ordinance language.

10.33 Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (b) Variances may only be issued by a community upon (i) a showing of 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) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

The language in Section 10.33 (a – c) is language required by FEMA and must be adopted verbatim. Note specifically that the reference to “exceptional hardship” in (b)(ii) must remain in the ordinance, although it has been replaced by the term “practical difficulties” in state zoning enabling statutes.

10.34 Flood Insurance Notice. The Zoning Administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and 2) Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.

Section 10.34 is required by FEMA.

117-188
(c)(7)

10.35 General Considerations. The community may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:

Section 10.35 is optional but recommended as guidance for communities in reviewing variance applications. The same factors are recommended for review of conditional use applications, below.

117-188
(d)(4)

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;

Ordinance Language

Commentary

- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

10.36 Submittal of Hearing Notices to the Department of Natural Resources (DNR). The (designated body/community official) must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

117-188
(d) (4)

10.37 Submittal of Final Decisions to the DNR. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

~~117-188~~

10.38 Record-Keeping. The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

117-188
(d) (5)

10.4 Conditional Uses:

10.41 Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with Section (s) _____ of the zoning ordinance/code.

117-188 (d)

10.42 Factors Used in Decision-Making. In passing upon conditional use applications, the (Governing Body) must consider all relevant factors specified in other sections of this ordinance, and those factors identified in Section 10.35 of this ordinance.

10.43 Conditions Attached to Conditional Use Permits. The (Governing Body) may attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

- (a) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy, and operation.
- (c) Imposition of operational controls, sureties, and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- (e) Floodproofing measures, in accordance with the State Building Code and this ordinance. The applicant must submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors

Cross-reference any conditional use procedures in the zoning ordinance, if these exist. If not, contact Floodplain Program staff for administrative language.

Section 10.42 is optional but recommended as guidance for decisions on conditional uses (and variances, as noted above).

Section 10.43 is also optional; conditions are intended to be specific to the particular site and proposed use.

Ordinance Language

Commentary

for the particular area.

- 10.44 Submittal of Hearing Notices to the Department of Natural Resources (DNR). The (designated body/community official) must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- 10.45 Submittal of Final Decisions to the DNR. A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

117-188 (d) (2)

SECTION 11.0 NONCONFORMITIES

11.1 Continuation of Nonconformities: A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.939(b) of this ordinance, are subject to the provisions of Sections 11.11 – 11.16 of this ordinance.

117-189

11.11 A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 11.12 below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.

11.12 Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 11.13 and 11.17 below.

117-189 (2)

11.13 If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of any nonconforming structure, then the entire structure must meet the standards of Section 4.0 or 5.0 of this ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor.

11.14 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance. The Assessor must notify the Zoning Administrator in writing of instances of nonconformities that have been discontinued for a period of more than one year.

117-189 (4)

11.15 If any nonconformity is substantially damaged, as defined in Section 2.938 of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0 or 5.0 will apply depending upon whether the use or structure is in the

117-189 (5)

Buildings and structures within the Floodway District may not be enlarged or expanded. In some cases, a floodway area can be filled without causing any rise in flood stage. In such cases, a Letter of Map Revision may be obtained that changes the floodway boundary, placing the area in the Flood Fringe. Contact Floodplain Program staff for details.

Section 11.13 is optional but recommended, in order to gradually eliminate nonconformities over time. Note that Section 11.17 refers to "substantial improvement," which is tracked over a one-year period.

Section 11.14 reflects an optional provision in statute (462.357.1e(1) and 394.36) – local government may impose reasonable conditions on the nonconforming use or structure. Many communities have adopted similar provisions in their zoning ordinances.

Section 11.15 is specific to floodplain uses in state and federal statute, as distinct from the standard provisions for nonconformities in the Chapters 394 and 462.

Ordinance Language

Commentary

Floodway or Flood Fringe, respectively.

- 11.16 If any nonconforming use or structure experiences a repetitive loss, as defined in Section 2.935 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- 11.17 Any substantial improvement, as defined in Section 2.939 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 4.0 or 5.0 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

Section 11.16 is optional but recommended, in order to gradually eliminate nonconformities that are frequently damaged but not to the "50%" level.

Section 11.17 is a mandatory federal requirement. As defined, "substantial improvement" is monitored over a one-year period.

SECTION 12.0 PENALTIES AND ENFORCEMENT

117-190
(a)

12.1 **Violation Constitutes a Misdemeanor:** Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.

117-190
(b)(4)

12.2 **Other Lawful Action:** Nothing in this ordinance restricts the *(Community)* from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.

117-190
(b)(2)

12.3 **Enforcement:** Violations of the provisions of this ordinance will be investigated and resolved in accordance with the provisions of Section(s) *(list relevant sections)* of the zoning ordinance/code. In responding to a suspected ordinance violation, the Zoning Administrator and *(Governing Body)* may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The *(Community)* must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

Cross-reference any sections of the zoning ordinance that deal with enforcement procedures. If such provisions don't exist, contact Floodplain Program staff for sample language.

SECTION 13.0 AMENDMENTS

117-191
(a)

13.1 **Floodplain Designation – Restrictions on Removal:** The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

Ordinance Language

Commentary

117-191
(6)

13.2 **Amendments Require DNR Approval:** All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.

13.3 **Map Revisions Require Ordinance Amendments.** The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.3 of this ordinance.

EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its passage and approval and publication, as required by law and/or charter.

Adopted by the _____ Board/City Council
(Community Name)

This _____ of _____, _____
(Day) (Month) (Year)

Attest: _____, County Board Chairperson/Mayor
(Name of Elected Official)

Attest: _____, County Administrator/City Clerk
(Name of Community Official)

Stamp With Community Seal: