

REQUEST FOR COUNCIL ACTION

DATE: September 12, 2016
ITEM NO: 21

Department Approval:	Administrator Reviewed:	Agenda Section:
Name Jeremy Barnhart		Planning
Title Community Development Director		

Item Description: 16-3841 City of Orono, Text Amendment: Flood Plain Regulations

Application Summary

The proposed ordinance would modify the existing floodplain ordinance to be consistent with National Flood Insurance Program's (NFIP) model ordinance, which regulates construction and development within the floodplain. Inclusion in the NFIP allows local property owners to obtain flood insurance, which may be a requirement of some mortgages. Without insurance, property owners will not be able to refinance the mortgage, or purchase a home with a loan.

The city must adopt new regulations, to be approved by the DNR and in effect by November 4, as the NFIP have amended the model ordinance intended to make the regulations easier to understand. The DNR has reviewed the draft ordinance and granted conditional approval, attached as Exhibit B.

The draft ordinance retains the ability for the city to reduce the 15' clear zone required around structures in the Flood Fringe for lots less than 65 feet wide via a Conditional Use Permit. This clear zone in narrow lots is problematic because it impacts the grades on adjacent parcels.

The Council is also asked to approve the summary ordinance, attached as Exhibit B. This will avoid the large publication costs of a 22 page ordinance,

Planning Commission Recommendation

The Planning Commission reviewed the proposed ordinance at their meeting on July 18th, recommending approval. The Commission recognized the importance of the ordinance and the requirement that the ordinance be approved by the DNR.

Planning Staff Recommendation

Staff recommends approval of the ordinances as presented.

Action Requested:

Approve by motion the draft Flood Plain ordinance and the summary ordinance for publication.

List of Exhibits:

Exhibit A. Draft Ordinance
Exhibit B. Summary Ordinance
Exhibit C. DNR conditional approval letter
Exhibit D. Existing Ordinance
Exhibit E. PC Minutes
Exhibit F. PC Memo

ORDINANCE NO. ____, THIRD SERIES

**CITY OF ORONO
HENNEPIN COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
PERTAINING TO FLOODPLAIN REGULATIONS IN ALL ZONING DISTRICTS**

THE CITY COUNCIL OF ORONO ORDAINS:

SECTION 1. **Article VIII Floodplain Management** shall be deleted in its entirety and the following shall be added to read as follows:

Article VIII Floodplain Management

DIVISION 1 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

78-1101 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Orono, Minnesota, does ordain as follows.

78-1102 Purpose:

- (1) This ordinance regulates development in the flood hazard areas of the City of Orono. 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.
- (2) 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.
- (3) 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.

DIVISION 2.0 GENERAL PROVISIONS

78-1103 How to Use This Ordinance: This ordinance adopts the floodplain maps applicable to the City of Orono and includes three floodplain districts: Floodway, Flood Fringe, and General Floodplain.

- (1) Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in Divisions 4 or 5 will apply, depending on the location of a property.

- (2) 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 Division 4 apply unless the floodway boundary is determined, according to the process outlined in Division 6. Once the floodway boundary is determined, the Flood Fringe District standards in Division 5 may apply outside the floodway.
- (3) The use shall be permitted within the floodway district to the extent that they are not prohibited by any other provision of this Code and provided all permits or authorizations are received as may be required by other provisions of this Code or regulation of other governmental agencies having jurisdiction, including without limitation, the Minnesota Department of Natural Resources, the Minnehaha Creek Watershed District, and the Lake Minnetonka Conservation District.

78-1104 Lands to Which Ordinance Applies: This ordinance applies to all lands within the jurisdiction of Orono 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.

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

78-1105 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 Hennepin County, Minnesota, and Incorporated Areas, dated November 4, 2016 and the Flood Insurance Rate Map panels enumerated below, dated November 4, 2016, all prepared by the Federal Emergency Management Agency. These materials are on file in the City Clerk’s office.

Effective Flood Insurance Rate Map panels:

27053C0144F 27053C0292F 27053C0304F
 27053C0165F 27053C0301F 27053C0306F
 27053C0312F 27053C0311F 27053C0284F
 27053C0302F 27053C0307F 27053C0316F
 27053C0285F 27053C0303F 27053C0308F

78-1106 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.

78-1107 Interpretation: The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.

- (1) 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 City 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) Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their appeal to the Planning Commission and to submit technical evidence.

78-1108 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 inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

78-1109 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 the City of Orono or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

78-1110 Severability: If any Division, 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.

78-1111 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.

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.

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

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.

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:

- (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.

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.

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.

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.

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.

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.

Flood Insurance Rate Map - *Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).*

Flood Frequency – the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

Flood Fringe – the portion of the Special Flood Hazard Area (one percent annual chance flood) located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for Hennepin County, Minnesota.

Flood Prone Area – any land susceptible to being inundated by water from any source (see “Flood”).

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.

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.

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.

Lake Minnetonka means the naturally occurring lake shown on all the official maps referenced in this chapter, including all bays, channels, inlets, lagoons, marshland and other water-connected portions, whether naturally occurring or artificially created:

- a. Defined ordinary high water elevation, 929.4 feet MSL.
- b. Defined floodplain boundary, 100-year flood, 931.5 feet MSL as established by the Minnehaha Creek Watershed District (MCWD).

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; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations, Part 60.3.

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.”

New Construction - Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this ordinance.

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.

One Hundred Year Floodplain – lands inundated by the “Regional Flood” (see definition).

Principal Use or Structure – all uses or structures that are not accessory uses or structures.

Reach – a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

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.”

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.

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.

- a. The regulatory flood protection elevation within the floodway and flood fringe districts, except for Lake Minnetonka, shall be established by adding 1.0 foot to the base flood water surface elevations within floodway listed in the floodway data table contained in the flood insurance study. Regulatory flood protection elevations between cross sections shall be interpolated.
- b. The regulatory flood protection elevation for Lake Minnetonka shall be 932.5 MSL.
- c. The regulatory flood protection elevation within the general floodplain district shall be calculated by a qualified registered professional engineer in accordance with procedures set forth in this article.

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.

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

Start of Construction – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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 78-1137 (2) of this ordinance and other similar items.

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

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:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- (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.

78-1112 Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 78-1105 above may include floodplain areas that lie outside of the corporate boundaries of the City of Orono at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Orono 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.

78-1113 Detachments. The Flood Insurance Rate Map panels adopted by reference into Section 78-1105 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 Orono 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.

DIVISION 3 ESTABLISHMENT OF ZONING DISTRICTS

78-1114 Districts:

- 1) Floodway District. The Floodway District includes those areas within Zones AE that have a floodway delineated as shown on the Flood Insurance Rate Map adopted in Section 78-1105, as well as portions of other lakes, wetlands, and basins within Zones A and AE (that do not have a floodway delineated) that are located at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- 2) Flood Fringe District. The Flood Fringe District includes areas within Zones AE that have a floodway delineated on the Flood Insurance Rate Map adopted in Section 78-1105, but are located outside of the floodway. For other lakes, wetlands and other basins within Zones A and AE that do not have a floodway delineated, the Flood Fringe District also includes those areas below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- 3) General Floodplain District. The General Floodplain District includes riverine areas within Zones A and AE that do not have a delineated floodway as shown on the Flood Insurance Rate Map adopted in Section 78-1105.

78-1115 Applicability: Within the floodplain districts established in this ordinance, the use, size, type and location of development must comply with the terms of this ordinance and other applicable regulations. In no cases shall floodplain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses or conditional uses in Divisions 4, 5 and 6 are prohibited. In addition, critical facilities, as defined in Section 78-1111, are prohibited in all floodplain districts.

DIVISION 4 FLOODWAY DISTRICT (FW)

78-1116 Permitted Uses: The following uses, subject to the standards set forth in Section 78-1117, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- (1) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- (2) Industrial-commercial loading areas, parking areas, and airport landing strips.
- (3) 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.
- (4) Residential lawns, gardens, parking areas, and play areas.

- (5) 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.

78-1117 Standards for Floodway Permitted Uses:

- (1) The use must have a low flood damage potential.
- (2) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.
- (3) Any facility that will be 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.

78-1118 Conditional Uses: The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 78-1148 of this ordinance and further subject to the standards set forth in Section 78-1119, if otherwise allowed in the underlying zoning district or any applicable overlay district.

- (1) Structures accessory to the uses listed in 78-1116 (1) - (5) above and the uses listed below.
- (2) Extraction and storage of sand, gravel, and other materials.
- (3) Marinas, boat rentals, docks, piers, wharves, and water control structures.
- (4) Storage yards for equipment, machinery, or materials.
- (5) Placement of fill or construction of fences that obstruct flood flows. Farm fences, as defined in section 78-1111, are permitted uses.
- (6) Travel-ready recreational vehicles meeting the exception standards in section 78-1144.
- (7) Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.
- (8) All forms of shoreline protection, including wood, metal, mortared stone or concrete seawalls.

78-1119 Standards for Floodway Conditional Uses:

- (1) 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.
- (2) Fill; Storage of Materials and Equipment:
 - (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.
 - (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.

- (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 City Council has approved a plan that assures removal of the materials from the floodway based upon the flood warning time available.
- (3) Accessory Structures. Accessory structures, as identified in Section 78-1118 (1), may be permitted, provided that:
 - (a) structures are not intended for human habitation;
 - (b) structures will have a low flood damage potential;
 - (c) structures will be constructed and placed so as to offer a minimal obstruction to the flow of flood waters;
 - (d) Service utilities, such as electrical and heating equipment, within these structures must be elevated to or above the regulatory flood protection elevation or properly floodproofed;
 - (e) Structures must be elevated on fill or structurally dry floodproofed in accordance with the FP1 or FP2 floodproofing classifications in the State Building Code. All floodproofed structures must be adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls.
 - (f) As an alternative, an accessory structure may be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment and does not exceed 576 square feet in size. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:
 - (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.
- (4) 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.
- (5) 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.
- (6) Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

Section 78-1120 through 78-1123 RESERVED

DIVISION 5 FLOOD FRINGE DISTRICT (FF)

78-1124 Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Section 78-1125. 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.

78-1125 Standards for Flood Fringe Permitted Uses:

- (1) 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.
- (2) Accessory Structures. As an alternative to the fill requirements of section 78-1125 (1), structures accessory to the uses identified in Section 78-1124 may be permitted to be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:
 - (a) the accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.
 - (b) All portions of floodproofed accessory structures below the Regulatory Flood Protection Elevation must be: (i) adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls, (ii) be constructed with materials resistant to flood damage, and (iii) must have all service utilities be water-tight or elevated to above the regulatory flood protection elevation
 - (c) Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:
 - (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.
- (3) 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 78-1125 (1) of this ordinance, or if allowed as a conditional use under Section 78-1126 (3) below.
- (4) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.
- (5) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.

- (6) 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.
- (7) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.
- (8) 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 City of Orono.
- (9) 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.
- (10) 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.
- (11) Manufactured homes and recreational vehicles must meet the standards of Division 9 of this ordinance.

78-1126 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 78-1148 of this ordinance.

- (1) Any structure that is not elevated on fill or floodproofed in accordance with Sections 78-1125 (1) and (2) of this ordinance.
- (2) Storage of any material or equipment below the regulatory flood protection elevation.
- (3) 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 78-1125 (1) of this ordinance.
- (4) The use of methods to elevate structures above the regulatory flood protection elevation, including stilts, pilings, parallel walls, or above-grade, enclosed areas such as crawl spaces or tuck under garages, shall meet the standards in Section 78-1127 (6).

78-1127 Standards for Flood Fringe Conditional Uses:

- (1) The standards listed in Sections 78-1125 (4) through (10) to all conditional uses.
- (2) Basements, as defined by Section 78-1118 of this ordinance, are subject to the following:
 - (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 78-1127 (3) of this ordinance.
- (3) Where lot size constraints prevent the fill elevation from extending 15 feet beyond the structure, a reduction in the fill extension may be allowed for lots less than 65 feet wide,

provided the lots were established prior to October 26, 1978, the initial establishment of a floodplain ordinance.

- (4) 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 FP1 or FP2 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.
- (5) 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.
 - (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 City of Orono.
 - (c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.
- (6) 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.
- (7) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:
 - (a) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
 - (b) Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - (i) The minimum area of openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The automatic openings shall have a minimum net area of

not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and

(ii) That the enclosed area will be designed of flood resistant materials in accordance with the FP3 or FP4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

DIVISION 6 GENERAL FLOODPLAIN DISTRICT (GF)

78-1128 Permitted Uses:

- (1) The uses listed in Section 78-1116 of this ordinance, Floodway District Permitted Uses, are permitted uses.
- (2) All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 78-1129 below. Division 4 applies if the proposed use is determined to be in the Floodway District. Division 5 applies if the proposed use is determined to be in the Flood Fringe District.

78-1129 Procedures for Floodway and Flood Fringe Determinations:

- (1) Upon receipt of an application for a permit or other approval within the General Floodplain District, the City Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.
- (2) 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 Section 78-1129 (3) below.
- (3) The determination of floodway and flood fringe must include the following components, as applicable:
 - (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 the reach must be assumed in computing floodway boundaries.
 - (d) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with

Minnesota Regulations 1983, Parts 6120.5000—6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective department of natural resources' area hydrologist prior to commencing the analysis.

- (i) A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 - (ii) Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - (iii) Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - (iv) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- (4) The City 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 City 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 City Administrator may approve or deny the application.
- (5) Once the Floodway and Flood Fringe District boundaries have been determined, the City Administrator must process the permit application consistent with the applicable provisions of Division 4.0 and 5.0 of this ordinance.

DIVISION 7 LAND DEVELOPMENT STANDARDS

78-1130 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 the City of Orono.

78-1131 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.

- (1) 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.
- (2) 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 City of Orono. 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.
- (3) 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.

- (4) In the General Floodplain District, applicants must provide the information required in Section 78-1129 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.
- (5) 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 water systems are located and constructed to minimize or eliminate flood damage, and
 - (c) Adequate drainage is provided to reduce exposure of flood hazard.

78-1132 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:

- (1) 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;
- (2) Constructed with materials and utility equipment resistant to flood damage;
- (3) Constructed by methods and practices that minimize flood damage; and
- (4) 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.

Sections 78-1133 through 78-1139 Reserved

DIVISION 8 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

78-1140 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.

78-1141 Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with Divisions 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.

78-1142 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 are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; 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, they must not be subject to impairment or contamination

during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

DIVISION 9 MANUFACTURED HOMES, MANUFACTURED HOME PARKS, AND RECREATIONAL VEHICLES.

78-1143 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:

- (1) Placement or replacement of manufactured home units is prohibited in the Floodway District.
- (2) If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of Division 5 of this ordinance and the following standards.
 - (a) New and replacement manufactured homes must be elevated in compliance with Division 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 78-1131 (2).

78-1144 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.

- (1) 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 78-1144 (2):
 - (a) Individual lots or parcels of record.
 - (b) Existing commercial recreational vehicle parks or campgrounds.
 - (c) Existing condominium-type associations.
- (2) 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 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 78-1144 (2).
 - (f) An accessory structure must constitute a minimal investment
- (3) Recreational vehicles that are exempt in Section 78-1144 (2) 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 Division 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.

DIVISION 10 ADMINISTRATION

78-1145 City Administrator: The City Administrator or other official designated by the Administrator must administer and enforce this ordinance.

78-1146 Permit Requirements:

- (1) Permit Required. A permit must be obtained from the City Administrator prior to conducting the following activities:
 - (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.
- (2) Application for Permit. Permit applications must be submitted to the City Administrator on forms provided by the City Administrator. The permit application must include the following as applicable:
 - (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 City Administrator as necessary to properly evaluate the permit application.
- (3) Certificate of City 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 City Administrator stating that the use of the building or land conforms to the requirements of this ordinance.
 - (4) 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.
 - (5) Record of First Floor Elevation. The City 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 City Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.
 - (6) Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the City 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).
 - (7) 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 City Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

78-1147 Variances and appeals:

- (1) 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 Title IV, Article II, Division 3 of this Ordinance.
- (2) Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
- (3) 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.
- (4) Flood Insurance Notice. The City 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.
- (5) General Considerations. The community may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:
- (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;
 - (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.
- (6) Submittal of Hearing Notices to the Department of Natural Resources (DNR). The City Administrator or designee shall 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.

- (7) 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.
- (8) Record-Keeping. The City 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.
- (9) Appeals. The city council shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this article.

78-1148 Conditional Uses:

- (1) Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with Title IV, Article V of this Ordinance.
- (2) Factors Used in Decision-Making. In passing upon conditional use applications, the City Council must consider all relevant factors specified in other sections of this ordinance, and those factors identified in Section 78-1147 of this ordinance.
- (3) Conditions Attached to Conditional Use Permits. The City Council 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 for the particular area.
- (4) Submittal of Hearing Notices to the Department of Natural Resources (DNR). The city administrator or designee 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.
- (5) 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.

DIVISION 11 NONCONFORMITIES

78-1149 Continuance 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 78-1111 of this ordinance, are subject to the provisions of paragraphs (1) – (6) of this section.

- (1) 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 Section 78-1149 (12) below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.
- (2) 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., FP1 thru FP4 floodproofing classifications) allowable in the State Building Code, except as further restricted in (3) and (7) below.
- (3) If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of any nonconforming structure, that shall be considered substantial improvement, and the entire structure must meet the standards of Division 4 or 5 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.
- (4) 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 City Administrator in writing of instances of nonconformities that have been discontinued for a period of more than one year.
- (5) If any nonconformity is substantially damaged, as defined in Section 78-1111 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 Divisions 4 or 5 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.
- (6) If any nonconforming use or structure experiences a repetitive loss, as defined in 78-1111 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- (7) Any substantial improvement, as defined in Section 78-1111 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Division 4.0 or 5.0 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

DIVISION 12.0 PENALTIES AND ENFORCEMENT

78-1150 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.

78-1151 Other Lawful Action: Nothing in this ordinance restricts the City of Orono 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 City 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.

78-1152 Enforcement: In responding to a suspected ordinance violation, the City 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 City of Orono 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.

DIVISION 13.0 AMENDMENTS

78-1153 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.

78-1154 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.

78-1155 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 78-1105 of this ordinance.

SECTION 2. EFFECTIVE DATE: This ordinance shall take effect immediately upon its passage and publication.

ADOPTED this ____ day of _____, 2016 on a vote of __ ayes and __ nays by the City Council of Orono, Minnesota.

ATTEST:

Diane Tiegs, City Clerk

Lili Tod McMillan, Mayor

Ordinance published in The Laker and The Pioneer newspapers the week of _____, 2016.

SUMMARY ORDINANCE NO. _____, THIRD SERIES

**CITY OF ORONO
HENNEPIN COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING THE ORONO MUNICIPAL CODE
BY AMENDING ARTICLE VIII FLOODPLAIN MANAGEMENT (SECTIONS 78-1101
THROUGH 78-1140) REGARDING FLOODPLAIN REGULATIONS BY
ESTABLISHING FLOOD DISTRICTS, DEFINING DEVELOPMENT, AND
REGULATING DEVELOPMENT IN THESE DISTRICTS**

NOTICE IS HEREBY GIVEN that, on September 12, 2016, Ordinance No. ____, Third Series, was adopted by the City Council of the City of Orono, Minnesota.

NOTICE IS FURTHER GIVEN that, because of the lengthy nature of Ordinance No. ____, Third Series, the following summary of the ordinance has been prepared for publication.

NOTICE IS FURTHER GIVEN that the ordinance adopted by the Council amends Chapter 78 of the Orono City Code as follows:

1. Article VIII is amended in its entirety by removal and replacing new floodplain regulations that were established by the National Flood Insurance Program and reviewed by the Minnesota Department of Natural Resources. The Ordinance, in addition to general regulations for development in the floodplain, addresses potential conflicts with other City Codes, delineates permitted and conditional uses, provides provisions for variances, regulates non-conformities, and outlines process for violation enforcement.

A printed copy of the complete ordinance is available for inspection by any person during the City's regular office hours.

APPROVED for publication by the City Council of the City of Orono, Minnesota, this 12th day of September, 2016.

ATTEST:

Diane Tiegs, City Clerk

Summary Ordinance published in The Laker and The Pioneer newspapers the week of _____.



MINNESOTA DEPARTMENT OF NATURAL RESOURCES
CENTRAL OFFICE
500 LAFAYETTE ROAD, BOX 25
SAINT PAUL, MN 55155
651-296-6157
888-646-6367

September 8, 2016

The Honorable Lili McMillan
Mayor, City of Orono
2750 Kelley Parkway
Orono, MN 55356

CONDITIONAL STATE APPROVAL OF FLOODPLAIN ORDINANCE & REQUIRED NEXT STEPS

Dear Honorable Mayor McMillan,

The Department of Natural Resources (DNR) received via email on August 1, 2016, a draft floodplain management ordinance for the City of Orono from Community Development Director Jeremy Barnhart. This ordinance is being adopted in order to incorporate the *Flood Insurance Study, Hennepin County, Minnesota and Incorporated Areas* and the accompanying Flood Insurance Rate Map panels with an effective date of November 4, 2016. The ordinance is also being adopted to incorporate floodplain ordinance text revisions mandated by the Federal Emergency Management Agency (FEMA) for communities participating in the National Flood Insurance Program (NFIP).

The draft floodplain management ordinance substantially complies with the state floodplain management rules (MR 6120.5000 to 6120.6200) and, to the best of my knowledge, with the floodplain management standards of the Federal Emergency Management Agency. Therefore, in accordance with Minnesota Statutes, Chapter 103F, I approve your draft floodplain management ordinance.

This approval is valid upon adoption of the draft ordinance by the city and receipt by this office of **one (1) copy each of the adopted ordinance (signed and stamped with the community seal), the affidavit of publication, and the completed "Ordinance Certification Checklist"** that I have enclosed. Please forward these documents to Ceil Strauss, the DNR's State NFIP Coordinator in St. Paul at the address above in the header. Upon receipt and verification, Ms. Strauss will transmit one copy of these materials to Mr. John Devine at FEMA's Chicago Regional Office.

Please remember, FEMA must receive a signed, certified, and in-effect ordinance no later than November 4, 2016. To allow sufficient time for processing and transmittal, we request that you submit the requested materials to the DNR no later than November 1, 2016. ***If FEMA has not received the documentation by the map effective date, FEMA will suspend the City from the National Flood Insurance Program.***

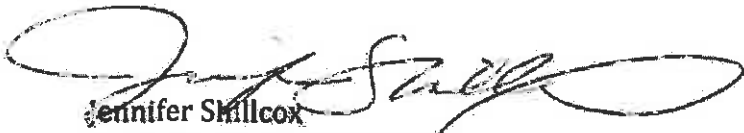


Please be advised that any future amendments of this ordinance or change in the designation of flood prone areas require prior approval of the Commissioner. In addition, you are required to send copies of hearing notices and final decisions pertaining to variance, conditional uses, and ordinance amendments to this agency. Please send those to State NFIP Coordinator Ceil Strauss at the above address. Should you have any questions on this ordinance or related matters, please contact Ms. Strauss at (651) 259-5713 or ceil.strauss@state.mn.us.

While our office in St. Paul will continue to be the main contact for the ordinance update, your DNR Area Hydrologist will continue to be your main contact for day to day assistance with administering your floodplain management ordinance and questions about other DNR water-related programs and permits. Your Area Hydrologist is Kate Drewry, who can be contacted at 651-259-5753 or kate.drewry@state.mn.us.

The DNR greatly appreciates your community's cooperation and initiative in providing for the reduction of flood damages through the adoption and administration of this ordinance.

Sincerely,



Jennifer Skillcox
Land Use Section Supervisor

Enclosures: Ordinance Certification Checklist

ec: Jeremy Barnhart, Community Development Director – City of Orono
Terri Yearwood, DNR Eco-Waters' Regional Manager
Jeanne Daniels, DNR Eco-Waters' District Manager
Kate Drewry, Area Hydrologist

ORDINANCE CERTIFICATION CHECKLIST

Please sign and return the checklist and all required documents to the DNR Floodplain Program office when completed.

1. July 2, 2016 Date(s) of published hearing notice.

2. July 18, 2016 Date(s) of public hearing.

3. _____ Date of ordinance adoption. Include 1 certified copy of the adopted ordinance text in its entirety including the signature of the chief elected official and the stamped seal of the community.

4. _____ Date of newspaper publication of adopted ordinance. Include 1 copy of affidavit of publication of the adopted ordinance. Publication of an ordinance summary is acceptable by statute.

5. _____ Date of official filing of adopted ordinance with County Recorder (_____ record book number and _____ page number). If filing of an adopted ordinance with the county auditor is not a standard practice, please indicate "N/A."

6. yes Board of Adjustment/Appeals has been established (yes or no).

Note: Cities under charter must also submit a list of any additional requirements for hearings, notices, etc. stated in their charter and not required by statute. Please specify:

Signature of Clerk/Auditor

ARTICLE VIII. - FLOODPLAIN MANAGEMENT¹⁹

DIVISION 1. - STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

Sec. 78-1101. - Statutory authorization.

The legislature of the State of Minnesota has, in Minn. Stat. ch. 103F and Minn. Stat. § 462.357 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the city council does ordain as follows:

Sec. 78-1102. - Findings of fact.

- (a) The flood hazard areas of the city are subject to periodic inundation which results in potential loss of life, loss of 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) Methods used to analyze flood hazards. This article is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
- (c) National Flood Insurance Program compliance. This article 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.

Sec. 78-1103. - Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize those losses described in section 78-1102(a) by provisions contained herein.

DIVISION 2. - GENERAL PROVISIONS

Sec. 78-1104. - Lands to which article applies.

This article shall apply to all lands within the jurisdiction of the city shown on the official floodplain overlay district map and/or the attachments thereto as being located within the boundaries of the floodway, flood fringe, or general flood plain districts.

Sec. 78-1105. - Establishment of official floodplain overlay district map.

The official floodplain overlay district map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this article. The attached material shall include the Flood Insurance Study, Volume 1 of 2 and Volume 2 of 2, Hennepin County, Minnesota. All jurisdictions and the flood insurance rate map panels numbered 27053C0144E, 27053C0165E, 27053C0284E, 27053C0285E, 27053C0292E, 27053C0301E, 27053C0302E, 27053C0303, 27053C0304E, 27053C0306E, 27053C0307E, 27053C0308E, 27053C0311E, 27053C0312E, 27053C0312E, 27053C0316E for the city, dated September 2, 2004, as developed by the Federal Emergency Management Agency. The official floodplain overlay district map shall be on file in the office of the planning director.

Sec. 78-1106. - Regulatory flood protection elevation.

The regulatory flood protection elevation shall be 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 flood plain that result from designation of a floodway.

Sec. 78-1107. - Interpretation.

- (a) In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the city council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
- (b) The boundaries of the zoning districts shall be determined by scaling distances on the official floodplain overlay district map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official floodplain overlay district map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the planning director, the city council shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance, and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the city council and to submit technical evidence.

Sec. 78-1108. - Abrogation and greater restrictions.

It is not intended by this article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only.

Sec. 78-1109. - Warning and disclaimer of liability.

This article does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This article shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Sec. 78-1110. - Severability.

If any section, clause, provision, or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

Sec. 78-1111. - Definitions.

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

- (1) *Accessory use or structure* means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- (2) *Basement* means 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.
- (3) *Conditional use* means 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:
 - 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.
- (4) *Equal degree of encroachment* means a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- (5) *Flood* means 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.

- (6) *Flood frequency* means the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
- (7) *Flood fringe* means that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the flood insurance study.
- (8) *Flood plain* means the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- (9) *Flood proofing* means a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- (10) *Floodway* means the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
- (11) *Lake Minnetonka* means the naturally occurring lake shown on all the official maps referenced in this chapter, including all bays, channels, inlets, lagoons, marshland and other water-connected portions, whether naturally occurring or artificially created:
 - a. Defined ordinary high water elevation, 929.4 feet MSL.
 - b. Defined floodplain boundary, 100-year flood, 931.5 feet MSL as established by the Minnehaha Creek Watershed District (MCWD).
- (12) *Lowest floor* means 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.
- (13) *Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
- (14) *Obstruction* means 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 flood plain 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.
- (15) *Principal use or structure* means all uses or structures that are not accessory uses or structures.
- (16) *Reach* means a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.
- (17) *Recreational vehicle* means 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 article, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.
- (18) *Regional flood* means 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 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.
- (19) *Regulatory flood protection elevation* means 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 flood plain that result from designation of a floodway.

- a. The regulatory flood protection elevation within the floodway and flood fringe districts, except for Lake Minnetonka, shall be established by adding 1.0 foot to the base flood water surface elevations within floodway listed in the floodway data table contained in the flood insurance study. Regulatory flood protection elevations between cross sections shall be interpolated.
 - b. The regulatory flood protection elevation for Lake Minnetonka shall be 932.5 MSL.
 - c. The regulatory flood protection elevation within the general floodplain district shall be calculated by a qualified registered professional engineer in accordance with procedures set forth in this article.
- (20) *Structure* means 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 78-1131(1) of this article and other similar items.
- (21) *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.
- (22) *Substantial improvement* means, 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:
- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - b. Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this article, "historic structure" shall be as defined in Code of Federal Regulations, Part 59.1.
- (23) *Variance* means a modification of a specific permitted development standard required in an official control including this article to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a practical difficulty as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

(Ord. No. 88 3rd series, § 4, 6-27-2011)

DIVISION 3. - ESTABLISHMENT OF FLOODPLAIN OVERLAY DISTRICTS

Sec. 78-1112. - Districts.

- (a) Floodway district. The floodway district shall include those areas designated as floodway on the flood insurance rate map adopted in section 78-1105.
- (b) Flood fringe district. The flood fringe district shall include those areas designated as floodway fringe. The flood fringe district shall include those areas shown on the flood insurance rate map as adopted in section 78-1105 as being within zone AE but being located outside of the floodway.
- (c) General flood plain district. The general flood plain district shall include those areas designated as zone A or zone AE without a floodway on the flood insurance rate map adopted in section 78-1105.

Sec. 78-1113. - Compliance.

No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations which apply to uses within the jurisdiction of this article. Within the floodway, flood fringe and general flood plain districts, all uses not listed as permitted uses or conditional uses in divisions 4, 5 and 6 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- (1) New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this article and specifically division 9.
- (2) Modifications, additions, structural alterations, normal maintenance 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 article and specifically section 78-1136.
- (3) As-built elevations for elevated or flood proofed 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 article and specifically as stated in section 78-1133 of this article.

DIVISION 4. - FLOODWAY DISTRICT (FW)

Sec. 78-1114. - Permitted uses.

- (a) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- (b) Private and public golf courses, driving ranges, archery ranges, picnic grounds, public boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
- (c) Residential lawns, gardens, parking areas, boat launching ramps, and play areas, provided no filling, grading or hardcover is involved.
- (d) Seasonally installed residential boat docks for single-family dwellings.
- (e) Natural stone riprap shoreline protection.
- (f) Sand beach blankets meeting the requirements of the DNR regulation 6MCAR15021B.

Sec. 78-1115. - Standards for floodway permitted uses.

- (a) The use shall have a low flood damage potential.
- (b) The use shall be permissible in the underlying zoning district if one exists.
- (c) The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.
- (d) The use shall be permitted within the floodway district to the extent that they are not prohibited by any other provision of this Code and provided all permits or authorizations are received as may be required by other provisions of this Code or regulation of other governmental agencies having jurisdiction, including without limitation, the Minnesota Department of Natural Resources, the Minnehaha Creek Watershed District, and the Lake Minnetonka Conservation District.
- (e) No use shall adversely affect the capacity of the channels or floodways or any tributary to the main stream or of any drainage ditch, or any other drainage facility or system.

Sec. 78-1116. - Conditional uses.

- (a) Structures accessory to the uses listed in 78-1114 above and the uses listed in 78-1116(a) subsections 1—8 below.
 1. Extraction and storage of sand, gravel, and other materials.

2. Marinas, boat rentals, docks, piers, wharves, and water control structures.
3. Railroads, streets, bridges, utility transmission lines, and pipelines.
4. Storage yards for equipment, machinery, or materials.
5. Placement of fill or construction of fences.
6. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.
7. All other forms of shoreline protection, including wood, metal mortared stone or concrete seawalls.
8. All permanent boat docks or other similar structures.

Sec. 78-1117. - Standards for floodway conditional uses.

- (a) All uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.
- (b) All floodway conditional uses shall be subject to the procedures and standards contained in section 78-1135 of this article.
- (c) The conditional use shall be permissible in the underlying zoning district if one exists.
- (d) Fill:
 1. Fill, dredge spoil, and all other similar materials, if approved to be deposited or stored, deposited or stored in the flood plain shall be no more than the minimal amount necessary to conduct a conditional use. The fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
 2. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.
 3. As an alternative, and consistent with subsection (d)(2) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the governing body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the office of the county recorder.
 4. All filling and grading activities shall be performed with only clean fill.
- (e) Accessory structures:
 1. Accessory structures shall not be designed for human habitation.
 2. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - a. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
 - b. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

3. Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards:
 - a. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - b. Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and
 - c. To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. 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.
- (f) Storage of materials and equipment.
1. 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.
 2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the city council.
- (g) Flood control. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minn. Stat. ch. 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.
- (h) A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

DIVISION 5. - FLOOD FRINGE DISTRICT (FF)

Sec. 78-1118. - Permitted uses.

- (a) The uses listed in section 78-1114 of this article shall be permitted uses.
- (b) All other permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non-residential structure or use of a structure or land shall be a permitted use in the flood fringe district provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for flood fringe district "Permitted uses" listed in section 78-1119 and the "Standards for all flood fringe uses" listed in section 78-1122.

Sec. 78-1119. - Standards for flood fringe permitted uses.

- (a) All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure erected thereon.

- (b) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be internally flood proofed in accordance with section 78-1117(e)(3).
- (c) The cumulative placement of fill where at any one time in excess of 1,000 cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with section 78-1119(a) of this article.
- (d) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
- (e) The provisions of section 78-1122 of this article shall apply.

Sec. 78-1120. - Conditional uses.

Any structure that is not elevated on fill or flood proofed in accordance with section 78-1119(a) and (b) and or any use of land that does not comply with the standards in section 78-1119(c) and (d) shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in sections 78-1121, 78-1122 and 78-1135 of this article.

Sec. 78-1121. - Standards for flood fringe conditional uses.

- (1) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:
 - a. *Design and certification.* The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
 - b. *Specific standards for above-grade, enclosed areas.* Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - 1. A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
 - 2. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.
- (2) Basements, as defined by section 78-1111(a)(2) of this article, shall be subject to the following:
 - a. Residential basement construction shall not be 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 flood proofed in accordance with section 78-1121(3) of this article.
- (3) All areas of non-residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.
 - (4) When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the city council. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.
 - (5) Storage of materials and equipment.
 - 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.
 - b. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the city council.
 - (6) The provisions of section 78-1122 of this article shall also apply.

Sec. 78-1122. - Standards for all flood fringe uses.

- (a) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the city council must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.
- (b) Commercial uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four upon occurrence of the regional flood.
- (c) Manufacturing and industrial uses. Measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in section 78-1122(b) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
- (d) Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation—FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

- (e) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official floodplain overlay district map.
- (f) Standards for recreational vehicles are contained in section 78-1131.
- (g) All manufactured homes 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 to be 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.

DIVISION 6. - GENERAL FLOOD PLAIN DISTRICT

Sec. 78-1123. - Permitted uses.

- (a) The uses listed in section 78-1114 of this article shall be permitted uses.
- (b) All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to section 78-1124 below. Division 4 shall apply if the proposed use is in the floodway district and division 5 shall apply if the proposed use is in the flood fringe district.

Sec. 78-1124. - Procedures for floodway and flood fringe determinations within the general flood plain district.

- (a) Upon receipt of an application for a permit or other approval within the general flood plain district, the applicant shall be required to furnish such of the following information as is deemed necessary by the planning director for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe district.
 1. A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 2. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 3. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 4. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- (b) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000—6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective department of natural resources' area hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 1. Estimate the peak discharge of the regional flood.
 2. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 3. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than 0.5 shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.

- (c) The planning director shall present the technical evaluation and findings of the designated engineer or expert to the governing body. The governing body must formally accept the technical evaluation and the recommended floodway and/or flood fringe district boundary or deny the permit application. The governing body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the department of natural resources or the city council for review and comment. Once the floodway and flood fringe district boundaries have been determined, the governing body shall refer the matter back to the planning director who shall process the permit application consistent with the applicable provisions of divisions 4 and 5 of this article.

DIVISION 7. - SUBDIVISIONS

Sec. 78-1125. - Review criteria.

No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the floodway district at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this article and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the floodway and flood fringe district boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

Sec. 78-1126. - Floodway/flood fringe determinations in the general flood plain district.

In the general flood plain district, applicants shall provide the information required in section 78-1124 of this article to determine the 100-year flood elevation, the floodway and flood fringe district boundaries and the regulatory flood protection elevation for the subdivision site.

Sec. 78-1127. - Removal of special flood hazard area designation.

The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

DIVISION 8. - PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

Sec. 78-1128. - Public utilities.

All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation.

Sec. 78-1129. - Public transportation facilities.

Railroad tracks, roads, and bridges to be located within the flood plain shall comply with divisions 4 and 5 of this article. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation 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.

Sec. 78-1130. - On-site sewage treatment and water supply 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 shall 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 shall be determined to be in compliance with this section.

DIVISION 9. - PLACEMENT OF RECREATIONAL VEHICLES

Sec. 78-1131. - Recreational vehicles.

Recreational vehicles that do not meet the exemption criteria specified in section 78-1131(1) below shall be subject to the provisions of this article and as specifically spelled out in section 78-1131(3) below.

- (1) Exemption. Recreational vehicles are exempt from the provisions of this article if they are placed in any of the areas listed in section (2) below and further they meet the following criteria:
 - a. Have current licenses required for highway use.
 - b. Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.
 - c. The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
- (2) Areas exempted for placement of recreational vehicles:
 - a. Individual lots or parcels of record.
 - b. Existing commercial recreational vehicle parks or campgrounds.
 - c. Existing condominium type associations.
- (3) Recreational vehicles exempted in section 78-1131(1) above lose this exemption when development occurs on the parcel exceeding \$500.00 for a structural addition to the recreational vehicle or exceeding \$500.00 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in divisions 4 and 5 of this article. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood-free location should flooding occur.

DIVISION 10. - ADMINISTRATION

Sec. 78-1132. - Planning director.

A planning director or designee shall administer and enforce this article. If the planning director finds a violation of the provisions of this article the planning director shall notify the person responsible for such violation in accordance with the procedures stated in section 78-1138 of the article.

Sec. 78-1133. - Permit requirements.

- (a) *Permit required.* A permit issued by the planning director in conformity with the provisions of this article shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair) or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

- (b) *Application for permit.* Application for a permit shall be made in duplicate to the planning director on forms furnished by the planning director and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- (c) *State and federal permits.* Prior to granting a permit or processing an application for a conditional use permit or variance, the planning director shall determine that the applicant has obtained all necessary state and federal permits.
- (d) *Certificate of zoning compliance for a new, altered, or nonconforming use.* It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance has been issued by the planning director stating that the use of the building or land conforms to the requirements of this article.
- (e) *Construction and use to be as provided on applications, plans, permits, variances and certificates of zoning compliance.* Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this article, and punishable as provided by section 78-1138 of this article.
- (f) *Certification.* The applicant shall be 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 article. Flood proofing measures shall be certified by a registered professional engineer or registered architect.
- (g) *Record of first floor elevation.* The planning director shall 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 planning director shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood-proofed.
- (h) *Notifications for watercourse alterations.* The planning director shall notify, in riverine situations, adjacent communities and the commissioner of the department of natural resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minn. Stat. ch. 103G, this shall suffice as adequate notice to the commissioner of natural resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- (i) *Notification to FEMA when physical changes increase or decrease the 100-year flood elevation.* As soon as is practicable, but not later than six months after the date such supporting information becomes available, the planning director shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

Sec. 78-1134. - Appeals and variances/duties of the city council.

- (a) *Rules.* The city council shall adopt rules for the conduct of business and may exercise all of the powers conferred on such bodies by state law.
- (b) *Administrative review.* The city council shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this article.
- (c) *Variances.* The city council may authorize upon appeal in specific cases such relief or variance from the terms of this article as will not be contrary to the public interest and only when practical difficulties exist, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the city council shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this article, any other zoning regulations in the community, and in the respective enabling legislation that justified the granting of

the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 2. Variances shall 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.
 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (d) *Hearings.* Upon filing with the city council of an appeal from a decision of the planning director, or an application for a variance, the city council shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The city council shall submit by mail to the commissioner of natural resources a copy of the application for proposed variances sufficiently in advance so that the commissioner will receive at least ten days notice of the hearing.
- (e) *Decisions.* The city council shall arrive at a decision on such appeal or variance within 60 days. In passing upon an appeal, the city council may, so long as such action is in conformity with the provisions of this article, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the planning director or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the city council may prescribe appropriate conditions and safeguards such as those specified in section 78-1135(6), which are in conformity with the purposes of this article. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article punishable under section 78-1138. A copy of all decisions granting variances shall be forwarded by mail to the commissioner of natural resources within ten days of such action.
- (f) *Appeals.* Appeals from any decision of the city council may be made, and as specified in this community's official controls and also by Minnesota Statutes.
- (g) *Flood insurance notice and record keeping.* The planning director shall 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 \$25.00 for \$100.00 of insurance coverage; and 2) such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the National Flood Insurance Program.

(Ord. No. 88 3rd series, § 5, 6-27-2011)

Sec. 78-1135. - Conditional uses.

The city council shall hear and decide applications for conditional uses permissible under this article. Applications shall be submitted to the planning director who shall forward the application to city council for consideration.

- (1) *Hearings.* Upon filing with the city an application for a conditional use permit, the city shall submit by mail to the commissioner of natural resources a copy of the application for proposed conditional use sufficiently in advance so that the commissioner will receive at least ten days notice of the hearing.

- (2) *Decisions.* The city council shall arrive at a decision on a conditional use within 60 days. In granting a conditional use permit the city council shall prescribe appropriate conditions and safeguards, in addition to those specified in section 78-1135(6), which are in conformity with the purposes of this article. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this article punishable under section 78-1138. A copy of all decisions granting conditional use permits shall be forwarded by mail to the commissioner of natural resources within ten days of such action.
- (3) *Procedures to be followed by the city in passing on conditional use permit applications within all flood plain districts.*
- a. Require the applicant to furnish such of the following information and additional information as deemed necessary by the city for determining the suitability of the particular site for the proposed use:
 1. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and
 2. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
 - b. Transmit one copy of the information described in subsection (a) above to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
 - c. Based upon the technical evaluation of the designated engineer or expert, the city council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
- (4) *Factors upon which the decision of the city council shall be based.* In passing upon conditional use applications, the city council shall consider all relevant factors specified in other sections of this article, and:
- a. The 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 or they may block bridges, culverts or other hydraulic structures.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - e. The importance of the services provided by the proposed facility to the community.
 - f. The requirements of the facility for a waterfront location.
 - g. The availability of alternative locations not subject to flooding for the proposed use.
 - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i. The relationship of the proposed use to the comprehensive 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.
 - l. Such other factors which are relevant to the purposes of this article.
- (5) *Time for acting on application.* The city council shall act on an application in the manner described above within 60 days from receiving the application, except that where additional information is required pursuant to section 78-1135(3) of this article. The city council shall render a written decision within 60 days from the receipt of such additional information.
- (6) *Conditions attached to conditional use permits.* Upon consideration of the factors listed above and the purpose of this article, the city council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this article. 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. Flood proofing measures, in accordance with the State Building Code and this article. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

DIVISION 11. - NONCONFORMING USES

Sec. 78-1136. - Nonconforming uses.

A structure or the use of a structure or premises which was lawful before the passage or amendment of this article but which is not in conformity with the provisions of this article may be continued subject to the following conditions. Historic structures, as defined in section 78-1111(a)(22)(b) of this article, shall be subject to the provisions of sections 78-1136(1)—(5) of this article.

- (1) No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.
- (2) Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in (3) and (6) below.
- (3) The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of division 4 or 5 of this article for new structures depending upon whether the structure is in the floodway or flood fringe district, respectively.
- (4) If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this article. The assessor shall notify the planning director in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.

- (5) If any nonconforming use or structure is substantially damaged, as defined in section 78-1111(a)(21) of this article, it shall not be reconstructed except in conformity with the provisions of this article. The applicable provisions for establishing new uses or new structures in divisions 4, 5 or 6 will apply depending upon whether the use or structure is in the floodway, flood fringe or general flood plain district, respectively.
- (6) If a substantial improvement occurs, as defined in section 78-1111(a)(22) of this article, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition (as required by section 78-1136(2) above) and the existing nonconforming building must meet the requirements of divisions 4 or 5 of this article for new structures, depending upon whether the structure is in the floodway or flood fringe district, respectively.

DIVISION 12. - PENALTIES FOR VIOLATION

Sec. 78-1137. - Violations.

Violation of the provisions of this article 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) shall constitute a misdemeanor and shall be punishable as defined by law.

Sec. 78-1138. - Authority/enforcement actions.

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:

- (1) In responding to a suspected ordinance violation, the planning director and local government 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.
- (2) When an ordinance violation is either discovered by or brought to the attention of the planning director, the planning director shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate department of natural resources' and Federal Emergency Management Agency regional office along with the community's plan of action to correct the violation to the degree possible.
- (3) The planning director shall notify the suspected party of the requirements of this article and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the planning director may order the construction or development immediately halted until a proper permit or approval is granted by the community. If the construction or development is already completed, then the planning director may either: (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.
- (4) If the responsible party does not appropriately respond to the planning director within the specified period of time, each additional day that lapses shall constitute an additional violation of this article and shall be prosecuted accordingly. The planning director shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this article.

DIVISION 13. - AMENDMENTS

Sec. 78-1139. - Floodplain designation.

The flood plain designation on the official floodplain overlay district map shall not be removed from flood plain 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 flood plain. Special exceptions to this rule may be permitted by the commissioner of natural resources if he determines that, through other measures, lands are adequately protected for the intended use.

Sec. 78-1140. - Amendments.

All amendments to this article, including amendments to the official floodplain overlay district map, must be submitted to and approved by the commissioner of natural resources prior to adoption. Changes in the official floodplain overlay district map must meet the Federal Emergency Management Agency's (FEMA) technical conditions and criteria and must receive prior FEMA approval before adoption. The commissioner of natural resources must be given ten-days written notice of all hearings to consider an amendment to this article and said notice shall include a draft of the article amendment or technical study under consideration.

Secs. 78-1141—78-1210. - Reserved.

**MINUTES OF THE
ORONO PLANNING COMMISSION MEETING
Monday, July18, 2016
6:30 o'clock p.m.**

Council
Exhibit E

7. #16-3841 CITY OF ORONO, TEXT AMENDMENT: FLOODPLAIN REGULATIONS, 8:12 p.m. – 8:20 P.M.

Barnhart stated the proposed ordinance would modify Orono's existing floodplain ordinance to be consistent with the National Flood Insurance Program. The NFIP has updated their model ordinance recently, and in order for someone to be included in the national Flood Insurance Program, the City must adopt floodplain regulations by ordinance. Inclusion in the NFIP allows local property owners to obtain flood insurance, which may be a requirement of some mortgages. Without insurance, property owners would not be able to refinance their mortgage or purchase a home with a loan.

The draft ordinance will replace Orono's existing floodplain regulations and would incorporate some additional definitions utilized by the City but follows the DNR recommended ordinance closely. If the Planning Commission recommends approval of the ordinance, it would then be sent to the DNR for their review, followed by City Council review.

Barnhart noted the changes are highlighted in gray and are as follows:

1. Page 3, Lines 25-30, a definition of Lake Minnetonka has been added.
2. Page 4, Lines 17-25, additional information has been included regarding the regulatory flood protection elevation (RFPE).
3. Page 9, the two areas that the DNR has recommended as optional have been highlighted. The first addition concerns the use of methods to elevate structures. The second addition is in regards to alternative elevation methods other than the use of fill. Barnhart stated the Planning Commission has the option of leaving those two items in the ordinance or to remove them.

Planning Staff recommends approval.

Leskinen noted Page 5, Lines 27-40 under Establishment of Zoning Districts, have the letters AE and A and AE highlighted. Leskinen asked whether there is any significance to the highlighting.

Barnhart indicated those areas were highlighted so he can discuss those with the DNR so he can have a better understanding of the zoning districts. Barnhart stated no changes are being made to that section.

McGrann asked if there is any concern that this will not be completed by November 4.

Barnhart stated the next step is to forward it on to the DNR. Barnhart stated the changes are relatively minor and that Staff does not anticipate any problems receiving approval from the DNR. Barnhart stated if the DNR does not respond or is not in support of them, he will pull those changes out of the ordinance prior to it going to the City Council and that he does not anticipate any problems meeting the November 4 deadline.

Lemke asked if the optional ones should remain.

Barnhart stated those are optional as identified by the DNR and are not necessarily in the City's Code currently.

Lemke asked if Staff feels those options should be included.

**MINUTES OF THE
ORONO PLANNING COMMISSION MEETING
Monday, July18, 2016
6:30 o'clock p.m.**

Barnhart stated it provides more options for Staff.

Leskinen asked if any of the optional methods to elevate structures are contrary to the City's ordinances.

Barnhart stated the floodplain regulations are an overlay district and overlay the base zoning for that district. The base zoning would contain the height restrictions and other regulations.

Acting Chair Lemke opened the public hearing at 8:20 p.m.

There were no public comments regarding this application.

Acting Chair Lemke closed the public hearing at 8:20 p.m.

Lemke moved, McGrann seconded, to recommend approval of Application No. 16-3841, City of Orono, Text Amendment, Floodplain Regulations as proposed. VOTE: Ayes 6, Nays 0.



To: Chair Thiesse and Planning Commission Members
Jessica Loftus, City Administrator

From: Jeremy Barnhart, Community Development Director

Date: July 18, 2016

Subject: #16-3841, City of Orono
Text Amendment
Public Hearing

Application Summary: The proposed ordinance would modify the existing floodplain ordinance to be consistent with National Flood Insurance Program, who have updated the model ordinance since 2004, when the original model ordinance was published and used to form the basis of the city's ordinances, since amended.

Staff Recommendation: Planning Department Staff recommends adoption of the ordinance.

List of Exhibits

Exhibit A. Draft Ordinance
Exhibit B. Existing Ordinance

Background

To be included in the National Flood Insurance Program (NFIP), a City must adopt floodplain regulations by ordinance. This ordinance must be generally consistent with that organization's model ordinance. Inclusion in the NFIP allows local property owners to obtain flood insurance, which may be a requirement of some mortgages. Without insurance, property owners will not be able to refinance the mortgage, or purchase a home with a loan.

The city must adopt new regulations, to be approved by the DNR and in effect by November 4, as the NFIP have amended the model ordinance intended to make the regulations easier to understand.

The draft ordinance will replace our existing flood plain regulations contained within Article VIII (Sections 78-1101 through 78-1140) of the Zoning Ordinance. The draft ordinance incorporates some additional definitions utilized by the City, but follows the DNR recommended ordinance closely. There are two sections in gray that are options, to be discussed.

Staff recommends approval.