

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.