

DIVISION 9. FLOODPLAIN DISTRICTS

Sec. 36-291. Purpose and intent.

- (a) It is the purpose of this division to promote the public health, safety and general welfare and to minimize those losses described in this subsection (b) of this section by the provisions contained in this division.
- (b) 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 government 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.
- (c) This division is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the state department of natural resources.
- (d) 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.

(Code 1976, § 14:5-9.1, Ord. No. 2276-04, 8-16-2004)

Sec. 36-292. Application of division provisions.

(a) Lands to which division applies. These floodplain regulations shall apply to all lands within the jurisdiction of the city shown on the official zoning map as being located within the boundaries of the floodway, flood fringe, or General floodplain districts. While this map shows the approximate locations of the boundaries of the floodway, flood fringe, and floodplain districts, the final location shall be determined by a topographic map, in comparison to the 100-year flood elevation and other applicable hydraulic modeling data.

(b) The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this ordinance. The attached material shall include:

- (1) Federal Emergency Management Agency Flood Insurance Study, Volume 1 of 2 and Volume 2 of 2, Hennepin County, Minnesota, All Jurisdictions dated September 2, 2004, as revised by the Letter of Map Revision effective September 28, 2007.
- (2) Federal Emergency Management Agency Flood Insurance Rate Map panels numbered 27053C0331E, 27053C0332E, 27053C0334E, 27053C0342E, 27053C0351E, 27053C0352E, 27053C0353E, 27053C0354E, and 27053C0362E for the City of St. Louis Park, dated September 2, 2004.
- (3) Federal Emergency Management Agency Flood Insurance Rate Map panel number 270530361E for the City of St. Louis Park revised to reflect Letter of Map Revision effective September 28, 2007.

The Official Zoning Map shall be on file in the office of the Zoning Administrator.

(Ord. No. 2341-07, 10-26-07)

(c) Regulatory flood protection elevation. The regulatory flood protection elevation shall be an elevation no lower than two feet above the elevation of a regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

(d) Warning and disclaimer of liability. This division 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 division shall not create liability on the part of the city or any of its officers or employees for any flood damages that result from reliance on this division or any administrative decision made thereunder.

(e) No stage increase permitted. No structure, fill, deposit, obstruction or storage of materials or equipment shall be allowed in any floodway, or general floodplain district which will cause any increase in the stage of the 100-year flood or will cause an increase in flood damages in the reaches affected.

(f) Compensating storage. The city may approve such structure, fill, deposit, obstruction or storage of materials or equipment if it otherwise complies with the provisions of this chapter and provision is made for compensating storage of floodwaters displaced by the activity listed in this subsection (f). Such compensating storage shall be located where it will achieve the goal of eliminating a stage increase. The area where the compensating storage is proposed shall be an area which was outside the 100-year flood zone before development as compensating storage.

(Code 1976, § 14:5-9.2; Ord. No. 2276-04, 8-16-2004; Ord. No. 2341-07, 10-26-07)

Sec. 36-293. Definitions.

The following definitions shall apply only to the application and enforcement of the floodplain district regulations. If any of the words defined are used elsewhere in this chapter, their meaning shall be those assigned by section 36-4.

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.

Equal degree of encroachment means 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.

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.

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

Flood fringe means that portion of the floodplain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the flood insurance study for the city. It also includes all land above the designated ordinary high-water level and below the regional flood elevation of all wetlands and lakes.

Floodplain 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.

Floodproofing 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.

Floodway means 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.

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.

Manufactured Homes means any manufactured home as defined in Section 36-4 of this ordinance except that there shall be no size limitation on the structure.

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 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.

Reach means a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or manmade obstruction. The segment of a stream between two consecutive bridge crossings would most typically constitute a reach.

Regional flood means a flood which is representative of large floods known to have occurred generally in the state 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 the flood insurance study.

Regulatory flood protection elevation means an elevation no lower than two feet 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.

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 or other similar items.

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.

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 which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary 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 Ordinance, "historic structure" shall be as defined in Code of Federal Regulations, Part 59.1.

(Code 1976, § 14:5-9.3, Ord. No. 2276-04, 8-16-2004)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 36-294. Establishment of zoning districts.

(a) Districts. The following overlay districts are established for the purpose of regulating development in flood hazard areas within the city:

- (1) *Floodway district (FW)*. The floodway district shall include those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 36-292(b).
- (2) *Flood fringe district (FF)*. The flood fringe district shall include those areas designated as floodway fringe on the Flood Insurance Rate Map as adopted in Section 36-292(b) as being within Zone AE or Zone AH but being located outside of the floodway.

- (3) *General floodplain district (FP)*. The general floodplain district shall include those areas designated as Zone A or Zones AE, Zone A0, or Zone AH without a floodway on the flood insurance rate map as adopted in Section 36-292(b).

(b) Compliance. Provisions for compliance are as follows:

- (1) Recreational vehicles that do not meet the exemption criteria specified in Section 36-294(b)(1)a below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 36-294(b)(1)c below.
 - a. Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 36-294(b)(1)b below and further they meet the following criteria:
 - 1. Have current licenses required for highway use.
 - 2. 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.
 - 3. The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
 - b. Areas Exempted For Placement of Recreational Vehicles:
 - 1. Individual lots or parcels of record.
 - 2. Existing commercial recreational vehicle parks or campgrounds.
 - 3. Existing condominium type associations.
 - c. Recreational vehicles exempted in Section 36-294(b)(1)a lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 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 Section 36-294(c) & Section 36-294(d) of this Ordinance. 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.
- (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 chapter.

(Ord. No. 2276-04, 8-16-04)

(c) Floodway district (FW). Within the floodway district, all uses not listed as permitted uses or conditional uses shall be prohibited. No new structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations which apply to uses within the jurisdiction of this chapter.

- (1) *Permitted uses.* The permitted uses in the floodway districts, if also permitted in the underlying zoning district, are as follows:
 - a. Outdoor plant nurseries, horticulture, forestry, sod farming, and wild crop harvesting.

- b. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, fish hatcheries, fishing areas, and single-purpose or multiple-purpose recreational trails.
 - c. Residential lawns, gardens, parking areas and play areas.
- (2) *Standards for floodway permitted uses.* The standards for floodway permitted uses are as follows:
- a. The use shall have a low flood damage potential.
 - b. The use shall be permissible in the underlying zoning district.
 - 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.
- (3) *Conditional uses.* The following uses shall require a conditional use permit if located in the FW district:
- a. Docks, piers, wharves and water control structures.
 - b. Railroads, streets, bridges, utility transmission lines and pipelines.
 - c. Structural works for flood control such as levees, dikes and floodwalls, constructed to any height where the intent is to protect individual structures for a frequency flood event equal to or less than the ten-year frequency flood event.
- (4) *Standards for floodway conditional uses.* The standards for floodway conditional uses are as follows:
- a. 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 reaches affected.
 - b. The conditional use shall be permissible in the underlying zoning district.
 - c. Any work which will change the course, current, or cross section of protected wetlands or public waters shall be subject to the provisions of M.S.A. ch. 103G. Any work below the ordinary high water level of a stream or waterbody shall require a permit from the state department of natural resources. Community wide structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodway district.
 - d. 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.
- (5) *Uses not permitted in the FW district.* The uses not permitted in the FW district are as follows:
- a. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway district.
 - b. Accessory structures shall not be located in the floodway district.
 - c. 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.

(d) Flood fringe district (FF).

- (1) *Permitted uses.* Permitted uses shall be those uses of land or structures listed as "permitted uses" in the underlying use districts. All permitted uses shall comply with the standards for flood fringe permitted uses.
- (2) *Standards for flood fringe permitted uses.* Standards for flood fringe permitted uses are as follows:
 - 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 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. For all structures constructed after June 15, 1998, the lowest floor elevations shall be no lower than the regulatory flood protection elevation. For all structures existing on June 15, 1998, and additions to structures existing on June 15, 1998, the lowest floor shall be no lower than one foot below the regulatory flood protection elevation.
 - c. As an alternative to elevation on fill, accessory structures that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with subsection (d)(3)b.1. & 2. of this section.
 - d. The cumulative placement of fill, the total amount of fill where at any one time in excess of 400 cubic yards located on the parcel, shall be allowable only as a conditional use unless such fill is specifically intended to elevate a structure in accordance with subsection (d)(2)a. of this section.
 - e. Any structure that is not elevated on fill or flood proofed in the manner provided in this section or any use of land that does not comply with the standards in subsection (d) of this section shall only be allowable as a conditional use.
- (3) *Standards for flood fringe conditional uses.* 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 and parallel walls, or abovegrade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered abovegrade and not a structure's basement or lowest floor if the enclosed area is abovegrade on at least one side of the structure; it is designed to internally flood and is constructed with flood resistant materials; and it is used solely for parking of vehicles, building access or storage. The alternative elevation methods noted in this subsection (d)(3) 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 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 are at or above the regulatory flood protection elevation or are designed to prevent floodwater from entering or accumulating within these components during times of flooding.
 - b. *Specific standards for abovegrade, enclosed areas.* Abovegrade, 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 “automatic” 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 floodwaters without any form of human intervention. (Ord. No. 2276-04, 8-16-04)
 2. That the enclosed area will be designed of flood-resistant materials as required by 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.
- c. *Basements.* Basements, as defined by section 36-293, shall be subject to the following:
1. Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 2. Nonresidential basements may be allowed below the regulatory flood protection elevation if the basement is structurally dry floodproofed in a manner specified in subsection (d)(3)d. of this section.
- d. *Structurally dry floodproofing.* All areas of nonresidential structures including basements placed below the regulatory flood protection elevation shall be floodproofed in a manner provided in the structurally dry floodproofing classifications in the state building code. Structurally dry floodproofing must meet the FP-1 or FP-2 floodproofing classification in the state building code 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 floodproofed to the FP-3 or FP-4 classification shall not be permitted.
- e. *Erosion/sedimentation control plan.* When at any one time more than 400 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. The plan must clearly specify methods to be used to stabilize the fill on the 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. The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.
- 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 a manner required by a plan approved by the city.

(4) *Standards for all flood fringe uses.* Standards for all flood fringe uses are as follows:

- a. *Vehicular access.* All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation.
- 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 (4) upon occurrence of a regional flood.

(Ord. No. 2276-04, 8-16-04)

- c. *Manufacturing and industrial uses.* Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in subsection (d)(4)b. of this section. In considering permit applications, consideration shall be given to needs of an industry whose business requires that it be located in floodplain areas.
- d. *Compacted fill; protected slopes.* Fill shall be properly compacted and the slopes shall be properly protected by the use of rip rap, vegetative cover or other acceptable methods. 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 multistructure or multilot 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. *Hydraulic capacity.* Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map.
- f. *Anchoring.* 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 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.

(e) General floodplain district (FP).

- (1) *Permissible uses.* The uses listed in subsection (c)(1) of this section shall be permitted uses. All other uses shall be subject to the floodway/flood fringe evaluation criteria of subsection (e)(2) of this section. Subsection (c) of this section shall apply if the proposed use is in the floodway district and subsection (d) of this section shall apply if the proposed use is in the flood fringe district.

- (2) *Procedures for floodway and flood fringe determinations within the general floodplain district.*
- a. Upon receipt of an application for a conditional use permit for a use within the FP district, the applicant shall be required to furnish such information deemed necessary by the zoning administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe district. This information may include the following:
 1. A plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; and the location and elevations of streets.
 2. The drainage area contributing to the waterbody and existing type and level of development in the drainage area.
 3. 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.
 4. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 5. 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 submit one copy of the information in subsection (e)(2)a. of this section to a designated engineer or other expert person or agency for technical assistance to determine 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 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the 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.
 - c. The zoning administrator shall present the technical evaluation and findings of the designated engineer or expert to the city council. The city council may formally accept the technical evaluation and the recommended floodway and flood fringe district boundary or deny the permit application. The city council, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency or the department of natural resources for review and comment. Once the floodway and flood fringe boundaries have been determined, the city council shall refer the matter back to the zoning administrator who shall process the permit application consistent with the applicable provisions of this division.

(f) Factors for conditional use approval.

- (1) Hearings. Upon filing for an application for a conditional use permit, the Zoning Administrator 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. In granting a conditional use permit the city council shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 36-294(f)(4), which are in conformity with the purposes of this Ordinance. 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 Ordinance punishable under Section 36-300. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
- (3) The factors upon which the decision of the city council shall be based when considering conditional use applications are as follows:
 - a. All relevant factors specified in other sections of this chapter.
 - b. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - c. 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.
 - d. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
 - e. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - f. The importance of the services provided by the proposed facility to the community.
 - g. The requirements of the facility for a waterfront location.
 - h. The availability of alternative locations not subject to flooding for the proposed use.
 - i. The compatibility of the proposed use with existing development and the development anticipated in the foreseeable future.
 - j. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - k. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - l. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
 - m. Such other factors which are relevant to the purposes of this division.
- (4) Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the city council shall 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) Flood proofing measures, in accordance with the State Building Code and this Ordinance. 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.

(Code 1976, § 14:5-9.4, Ord. No. 2276-04, 8-16-2004)

Sec. 36-295. Application to subdivision.

(a) No land shall be subdivided which is unsuitable because of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the floodplain districts shall contain a building site at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this division 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 floodplain, the floodway and flood fringe 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.

(b) Floodway/Flood Fringe Determinations in the General Flood Plain District: In the General Flood Plain District, applicants shall provide the information required in Section 294(e)(2) of this Ordinance to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

(c) 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.

(Code 1976, § 14:5-9.5; Ord. No. 2276-04, 8-16-2004)

Sec. 36-296. Public facilities.

(a) **Generally.** All public utilities and facilities such as gas, electrical, sewer and water supply systems to be located in the floodplain shall be floodproofed in a manner required by the state building code or elevated to above the regulatory flood protection elevation.

(b) **Public transportation facilities.** Railroad tracks, roads and bridges to be located within the floodplain shall comply with this division. 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.

(c) **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.

(Code 1976, § 14:5-9.6; Ord. No. 2276-04, 8-16-2004)

Sec. 36-297. Certification and record.

(a) Permit required. A permit issued by the zoning administrator which conforms to the provisions of this chapter shall be secured prior to the following:

- (1) Erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure or portion thereof;
- (2) Use or change of use of a building, structure or land;
- (3) Change or extension of a nonconforming use;
- (4) Placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain;
- (5) Construction of a dam, septic system or fence; and
- (6) Repair of a structure that has been damaged by flood, fire, tornado, or any other source.

(b) Application for permit. Application for a permit shall be made in duplicate to the zoning administrator on forms furnished by the zoning administrator and shall include the following, where applicable:

- (1) Plans in duplicate drawn to scale, showing the nature, location, dimensions and elevations of the lot;
- (2) Existing or proposed structures, fill or storage of materials; and
- (3) The location of the items listed in subsection (b)(2) of this section in relation to the stream channel or waterbody.

(c) State and federal permits. Prior to granting a permit or processing an application for a conditional use permit or variance, the zoning administrator 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 of any building or premises hereafter created, erected, changed, converted, altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the zoning administrator stating that the use of the building or land conforms to the requirements of this division.

(e) 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 the manner required by the provisions of this division. Floodproofing measures shall be certified by a registered professional engineer or registered architect.

(f) Record of first-floor elevation. The zoning administrator 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 zoning administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are floodproofed.

(g) Notifications for Watercourse Alterations. The Zoning Administrator 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 Minnesota Statute, Chapter 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).

(h) Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.
(Code 1976, § 14:5-9.7; Ord. No. 2276-04, 8-16-2004)

Sec. 36-298. Nonconformities--Compliance with chapter.

(a) A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance from which this chapter is derived but which does not conform to the provisions of this chapter may be continued subject to the following conditions. Historic structures, as defined in Section 36-293(b) of this Ordinance, shall be subject to the provisions of Sections 36-298(a)(1) – (4) of this Ordinance.:

- (1) No such use shall be expanded, changed, enlarged or altered in a way which 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 a manner permitted in the state building code, except as further restricted in subsection (a)(3) and (a)(5) of this section.
- (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 city's initial floodplain 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 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 this chapter for new structure.
- (4) If any nonconforming use or structure is substantially damaged, as defined in Section 36-293 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this chapter, The applicable provisions for establishing new uses or new structures will apply depending upon whether the use or structure is in the floodway, flood fringe or general floodplain district.
- (5) If a substantial improvement occurs, as defined in Section 36-293 of this Ordinance, 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 36-298(a)(2) above) and the existing nonconforming building must meet the requirements of Section 36-294(c) or 36-294(d) of this Ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

(Code 1976, § 14:5-9.8, Ord. No. 2276-04, 8-16-2004)

Sec. 36-299. Amendments.

(a) The floodplain designation on the official zoning map shall 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 natural resources if it is determined that, through other measures, lands are adequately protected for the intended use.

(b) All amendments to this chapter, including amendments to the official zoning map, shall be submitted to and approved by the commissioner of natural resources prior to adoption. Changes in the official zoning map must meet the Federal Emergency Management Agency's 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 chapter and such notice shall include a draft of the amendment or technical study under consideration.

(Code 1976, § 14:5-9.9, Ord. No. 2276-04, 8-16-2004)

Sec. 36-300. Penalties for violation.

(a) 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) shall constitute a misdemeanor and shall be punishable as defined by law.

(b) 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 Zoning Administrator 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 Zoning Administrator, the Zoning Administrator 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 Zoning Administrator shall notify the suspected party of the requirements of this Ordinance 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 Zoning Administrator 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 Zoning Administrator 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 Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator 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 Ordinance.

(Ord. No. 2276-04, 8-16-2004)

Secs. 36-301--36-320. Reserved.