



CITY HALL

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January 22, 2014

Planning Commissioners
Winona, Minnesota 55987

Dear Commissioner:

The next meeting of the Planning Commission will be held on **Monday, January 27, 2014, at 4:30 p.m. in the Wenonah Room** of the Winona City Hall.

1. Call to Order
2. Minutes – January 13, 2014
3. Discussion – Proposed Floodplain Management Ordinance Amendments
4. Other Business
5. Adjournment

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Moeller".

Mark Moeller
City Planner

PLANNING COMMISSION MINUTES

DATE: January 13, 2014

TIME: 4:30 p.m.

PRESENT: Chairperson Porter, Commissioners Boettcher, Buelow, Davis, M. Olson, and Hahn

ABSENT: Commissioners Ballard, L. Olson, and English

STAFF PRESENT: Assistant City Planner, Carlos Espinosa

The meeting was called to order at 4:30 p.m. by Chairperson Porter.

Approval of Minutes – December 9, 2013

The minutes for December 9, 2013 were approved without changes upon motion by Commissioner Davis and second by Commissioner Hahn.

Election of Officers

Chairperson Porter stated that he and Commissioner Davis had spoken with Commissioners about a new slate of officers for 2014. Mr. Porter stated that a few Commissioners expressed the need to gain more experience on the Commission before assuming the role of Chairperson. As a result, Mr. Porter agreed to serve as Chair for one more year. Mr. Porter also stated that Commissioner Hahn had agreed to serve as Vice-Chair.

There being no further comments or questions from Commissioners, Mr. Porter called for a vote. The aforementioned slate of officers for 2014 was approved unanimously.

Commission Bylaws

Mr. Porter stated that Planning Commission bylaws call for a review of the rules on an annual basis.

Commissioner Boettcher asked if the Commission could establish a time lime for non-public hearing meetings. Mr. Espinosa responded that he could check with the City Attorney on the question.

Mr. Porter asked if Section 3.2 detailing hearing procedures could be modified to allow the Commission to ask questions of experts in the audience after a public hearing has been closed. Mr. Porter explained that the current wording of the bylaws indicates the public hearing would have to be reopened for Commissioners to ask questions. Mr. Espinosa responded that he could ask the City Attorney about this request as well and bring the response to next Commission meeting.

PLANNING COMMISSION MEETING MINUTES

JANUARY 13, 2014

PAGE 2

Other Business

Commissioner Davis asked about what the City is doing in response to the recent fatal accident along Riverview Drive. Mr. Espinosa responded that he'd talk to the City Engineer and bring a status update to the next Commission meeting.

Commissioner Davis also asked about the status of amending the City Code to address the regulations which allow parking up to 300 feet away from buildings. Mr. Espinosa stated that City Planner Mark Moeller is currently working on an agenda item for the Commission.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 4:50 p.m.

Carlos Espinosa
Assistant City Planner

PLANNING COMMISSION

AGENDA ITEM: 3. Discussion – Proposed Floodplain Management Ordinance Amendments

PREPARED BY: Mark Moeller

DATE: January 27, 2014

During the past several months, staff has been working with representatives of the MN DNR to update the City's Floodplain Management Ordinance. Although originally adopted in the early 70s, the ordinance has been updated on a number of occasions. In summary, the current effort will result in the adoption of several flood maps, needed to ensure total map coverage of the City, and to bring ordinance text in line with Federal Emergency Management Agency (FEMA) and state model ordinance standards/language. For Commission reference, a copy of the current ordinance, showing proposed amendments, is attached. Generally, this information is being presented to you on an informational basis at this time. Following Monday's meeting, additional corrections will be made and a final draft ordinance will be prepared. This will be followed by both Commission and Council hearings/actions.

Pursuant to MN Statutes 103F, state water resource management provisions mandate the city's adoption, administration, and enforcement of a floodplain management ordinance. Through this document, floodplain areas of the City are identified and methods of managing these areas are presented. A properly prepared and approved ordinance also paves the way for citizens to obtain Federal Flood Insurance, when the need exists.

Attachment

ARTICLE XV. FLOOD PLAIN MANAGEMENT ORDINANCE

43.66 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE.

- (a) Statutory Authorization. The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Minnesota Statutes 412.191, 462.351-462.365, and 471.62 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.
- (b) Findings of Fact.
 - (1) The flood hazard areas of the City of Winona, Minnesota, 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 or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - (2) This ordinance 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) Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 43.66(b)(1) by provisions contained herein.

(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.

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

(c)(f) _____

Comment [SR1]: Required by FEMA

Comment [SR2]: Optional but recommended language

43.67 GENERAL PROVISIONS.

- (a) Establishment of Official Flood Plain Zoning Map. 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 the Flood Insurance Study for the City of Winona prepared by the Federal Emergency Management Agency dated August 19, 1997, the Flood Insurance Study for the County of Winona dated July 18, 1983, and the Flood Insurance Rate Map and Flood Boundary and Floodway Map panels enumerated below. The official Zoning Map shall be on file in the office of the City Engineer.

<u>FIRM PANEL NUMBER</u>	<u>EFFECTIVE DATE</u>
275250 - 0001 B	January 19, 1983
275250 - 0002 D	August 19, 1997
275250 - 0003 C	July 17, 1986
275250 - 0004 D	August 19, 1997
275250 - 0005 D	August 19, 1997
275250 - 0006 D	August 19, 1997
2705250077C	January 18, 1984
2705250079C	January 18, 1984
2705250091C	January 18, 1984
2705250092C	January 18, 1984
2705250094C	January 18, 1984
2705250100C	January 18, 1984

FBFM PANEL NUMBER EFFECTIVE DATE

Comment [m3]: Panel #- 2752500001D; Effective Date: August 19, 1997

Comment [m4]: Panel #-2752500003D; Effective Date: August 19, 1997

Comment [m5]: Why is this listing needed? Is there a difference between FIRM and FBFM Panels relating to ordinance purposes?

Comment [SR6]: Yes, the difference is that the FBFBMs delineate the floodway, where the older FIRMs do not. The new maps combine both, but (for now) you're stuck with the old ones.

<u>2705250077</u>	<u>January 18, 1984</u>
<u>2705250079</u>	<u>January 18, 1984</u>
<u>2705250091</u>	<u>January 18, 1984</u>
<u>2705250092</u>	<u>January 18, 1984</u>
<u>2705250094</u>	<u>January 18, 1984</u>

Ord. No. 3229 02/03/97.

- (b) Lands to Which Ordinance Applies. This ordinance shall apply to all lands within the jurisdiction of the City of Winona which are shown on the Zoning Map as being located within the boundaries of the Floodway, ~~or Flood Fringe Districts or~~ General Floodplain Districts.

(1) The Floodway, Flood Fringe and General Floodplain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts shall be in addition to any other requirements set forth in this ordinance. In case of a conflict, the more restrictive standards shall apply.

- (c) Interpretation. (1) In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

- (2) The boundaries of the zoning districts shall be determined by scaling distances on the Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official Zoning Map, the Board of Adjustment shall make the necessary interpretation in conformance with the provisions of Section 43.74(c). All decisions will be based on elevations on the regional (1% chance) flood profile, the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, if earlier, and other available technical data.

Comment [m7]: New Ord. Section 43.75(b)

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

- (d) Amendments. The flood plain designation on the official Zoning 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 regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this ordinance, including amendments to the official Zoning Map, must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. Changes in the official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner must approve the amendment prior to community approval. The Commissioner of ~~Natural Resources~~the DNR must be given 10-days written notice of all hearings to consider an amendment to this ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

Comment [m8]: Amendments to Ordinance and Zoning Map require ordinance approval per Zoning Code Section 43.41.

- (e) Abrogation and Greater Restrictions. It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the

Comment [SR9]: This note could be added as a cross-reference – the other requirements here are mandatory (except for the last sentence, which is optional).

provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

- (f) Warning and Disclaimer of Liability. This ordinance 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 ordinance shall not create liability on the part of the City of Winona or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.
- (g) Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of c jurisdiction, the remainder of this ordinance shall not be affected thereby.
- (h) Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

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

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

Basement - 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.

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: (1) certain conditions as detailed in the zoning ordinance exist and (2) the structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

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

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

Farm Fence – A fence as defined by Minn. Statutes Section 344.02, Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.

Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

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

Flood Fringe - 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 for the City of Winona.

Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

Comment [SR10]: optional definition – farm fences can be exempted from CUP requirements if desired.

Flood Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."

Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory 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.

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

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

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

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

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.

Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel-trailers/recreational vehicles not meeting the exemption criteria specified in Section 43.71(c)(1) of the ordinance and 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

Comment [m11]: New Ord. Section 43.74(c)(1)

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.
- (a)(b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.

Variance - means a modification of a specific permitted development standard required in an official control including this ordinance 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 or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.
Ord. No. 9/21/2011

(i) Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 2.3 above may include floodplain areas that lie outside of the corporate boundaries of the City of Winona at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Winona after the date of adoption of this ordinance, the newly annexed floodplain lands shall be subject to the provisions of this ordinance immediately upon the date of annexation.

Comment [SR12]: FEMA still requires "hardship" determination for variances – you could delete definition or change terminology.

Comment [m13]: Per comments, delete variance definition in total.

43.68

ESTABLISHMENT OF ZONING DISTRICTS.

(a) Districts.

- (1) (F-1) Floodway District. The Floodway District shall include those areas designated as floodway on the flood boundary and floodway maps and flood insurance rate maps adopted in Section 43.67(a).
- (2) (F-2) Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe on the flood boundary and floodway maps adopted in Section 43.67(a), and those areas designated on the flood insurance rate maps adopted in Section 43.67 as being within Zones AE, AO, or AH but located outside of the floodway.
- (2)(3) (F-3) General Floodplain District. The General Floodplain District shall include those areas designated as Zone A on the flood insurance rate maps adopted in Section 43.67, and those areas designated as Zones A1-30, AO, or AH without a floodway on the flood boundary and floodway maps adopted in Section 43.67(a).

Comment [SR14]: Because you are adopting two sets of 1984 maps that show equivalent but different types of data, this section is complicated and confusing. New maps are likely for Winona County in the next 2-3 years, which will enable you to simplify this ordinance.

Comment [m15]: Look forward to the updates.

- (b) **Compliance.** Within the floodplain districts established in this ordinance, the use of any land, the use, size, type and location of structures on lots, the installation and maintenance of transportation, utility, water supply and waste treatment facilities, and the subdivision of land shall be in full compliance with the terms of this ordinance and other applicable regulations. All uses not listed as permitted uses or conditional uses in Sections 43.69 and 43.70, respectively, 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 ordinance and other applicable regulations which apply to uses within the jurisdiction of this ordinance. Within the Floodway and Flood Fringe Districts, all uses not listed as permitted uses or conditional uses in Sections 43.69 and 43.70 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 recreational~~ vehicles are subject to the general provisions of this ordinance and specifically Section 43.73;

Comment [m16]: New Ord. Section 43.74.

- (2) Modifications, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this ordinance and specifically Section 43.75; and
- (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 ordinance and specifically as stated in Section 43.74 of this ordinance.

Comment [m17]: New Ord. Section 43.76.

Comment [m18]: New Ord. Section 43.75.

43.69 FLOODWAY DISTRICT. (a) Permitted Uses. ~~The following uses, subject to the standards set forth in Section 43.69(b), are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:~~

- (1) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- (2) Industrial-commercial loading areas, parking areas, and airport landing strips.
- (3) Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, ~~trap and skeet ranges~~, hunting and fishing areas, and single or multiple purpose recreational trails.
- (4) Residential lawns, gardens, parking areas, and play areas.

Comment [SR19]: We now advise against trap and skeet ranges because of potential for lead contamination, but this is optional.

Comment [m20]: No problem with removing this use.

(b) Standards for Floodway Permitted Uses.

- (1) The use shall have a low flood damage potential.
- ~~(2) The use shall be permissible in the underlying zoning district.~~
- ~~(3)~~(2) 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.

(c) Conditional Uses Subject to the Provisions of Sections 43.69(d)(1)-(9).

- (1) Structures accessory to the uses listed in (a) above and the uses listed in (2)-(8) below.
- (2) Extraction and storage of sand, gravel, and other materials.
- (4) Marinas, boat rentals, docks, piers, wharves, and water control structures.
- (4) Railroads, streets, bridges, utility transmission lines, and pipelines.
- (5) Storage yards for equipment, machinery, or materials.
- ~~(6) Placement of fill or construction of fences that obstruct flood flows. This does not include farm fences, as defined in section 2.817.~~
- ~~(6)~~(7) ~~Travel trailers and travel vehicles~~Road-ready recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of

Comment [m21]: Should this subsection reference "other" applicable codes /ordinances. Specifically Shoreland and Storm Water management requirements. An example would be Storm Water management provisions that require a number of provisions for "special water" shoreland categories. One of these provisions is no land disturbance within 100 feet of a Special Water. How far should we go with this relative to this ordinance?

Comment [SR22]: Cross-references to other applicable codes are optional and likely not needed. The definition of the ordinance as an overlay in 43.67(b)(1) states that these standards are in addition to any others in ordinance and that the most restrictive apply in case of conflict.

Comment [SR23]: optional exemption for farm fences

Comment [m24]: New Ord. Section 43.67(h).

Comment [m25]: Presume reference is simply to "Recreational Vehicle". Delete "Road Ready"?

Comment [SR26]: OK to delete

Section 43.73(c) of this ordinance.

Comment [m27]: New Ord. Section 43.74(c).

- (7)(8) ~~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.

Comment [SR28]: To do this, you would need a conditional LOMR, and if that is obtained, then it's no longer a conditional use, because no longer considered part of floodway.

(d) Standards for Floodway Conditional Uses.

- (1) ~~All Uses. No conditional use shall be allowed that will cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.~~

- (1) ~~The conditional use shall be permissible in the underlying zoning district.~~

- (2) All floodway conditional uses shall be subject to the procedures and standards contained in Section 43.74(d) of this ordinance.

Comment [m29]: New Ord. Section 43.75(c).

~~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.~~

(3) Fill.

- (aa) Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected to the regulatory flood elevation protection from erosion by vegetative cover, mulching, riprap or other acceptable method.
- (bb) 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.~~
- (cc) As an alternative, and consistent with subsection (bb) 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~~ City Council 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) Accessory Structures.

- (aa) Accessory structures shall not be designed for human habitation.
- (bb) 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. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- (cc) The lowest floor of accessory structures shall be elevated on fill or structurally dry flood-proofed to the regulatory flood elevation protection 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 floodproofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, it must be used solely for parking of vehicles and limited storage.~~

~~(dd)~~ All flood-proofed accessory structures must meet the following additional standards, as appropriate: (1) 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; and (2) any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood-proofed.

~~(ee)~~ As an alternative, an accessory structure may be flood-proofed to the FP-3 or FP-4 floodproofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 576 00 square feet in size, and for a detached garage, it must be used solely for parking of vehicles and limited storage. The structure must meet the following additional standards:

~~(i)~~ 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; and

~~(ii)~~ 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.

(5) Storage of Materials and Equipment.

(aa) 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.

(bb) Storage of other materials or equipment may be allowed below the regulatory flood protection elevation if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the ~~governing-body~~City Council.

(6) 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 Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

~~(7)~~ 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.

~~(7)(8)~~ Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

~~(8)~~ 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

Comment [SR30]: Can be deleted here and moved to 43.72 to apply across all districts.

~~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.~~

43.70 FLOOD FRINGE DISTRICT.

- (a) Permitted Uses. ~~Permitted Uses shall bear~~ those uses of land or structures ~~listed as Permitted Uses allowed~~ in the underlying zoning use district(s) ~~that comply with the standards in Sections . All Permitted Uses shall comply with the standards for Flood Fringe "Permitted Uses" listed in Section 43.70(b) and the "Standards for all Flood Fringe Uses" listed in Section 43.70(e).~~
- (b) Standards for Flood Fringe Permitted Uses. (1) 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 (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
- (2) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed ~~57600~~ square feet for the outside dimension at ground level may be internally flood-proofed in accordance with Section 43.69(d)(5)(cc).
- (3) In the unnumbered A zone which is bound by Highway 14-61, the East Burns Valley Creek dike, Homer Road, and the corporate city limits, the regulatory flood protection elevation is established at 660.0 feet.
- (4) The cumulative placement of fill where at any one time in excess of one-thousand (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 43.70(b)(1) of this ordinance.
- (5) The storage of any materials or equipment which are located on fill to the Regulatory Flood Protection Elevation.
- (c) Conditional Uses. Any structure that is not elevated on fill or flood-proofed in accordance with Section 43.70(b)(1)-(2) or any use of land that does not comply with the standards in Section 43.70(b)(3)-(4) 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 43.70(d)-(e) and 43.74(d) of this ordinance.
- (d) 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:
- (aa) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as

Comment [SR31]: FEMA now allows 576 sq. ft. (24' by 24')

Comment [SR32]: Looks as if city limits have moved since then. History? Still valid? Redefine boundary?

Comment [m33]: The defined area of this provision has not changed as a result of City expansion. Still valid.

Comment [m34]: New Ord. Section 43.75(d).

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.

- (bb) 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) The minimum area of openings in the walls where internal flooding is to be used as a flood-proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. 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; 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 43.67(h) of this ordinance, shall be subject to the following:
 - (aa) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.
 - (bb) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood-proofed in accordance with Section 43.70(d)(3) of this ordinance.
 - (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 floodproofing 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 governing body. 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.

- (aa) Unless located on fill above the regulatory flood protection elevation, 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.
 - (bb) Storage of other materials or equipment may be allowed below the regulatory flood protection elevation if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the governing body.
- (e) Standards for All Flood Fringe Uses. (1) All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Board of Adjustment 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.
- (2) ~~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 any~~ facilities to be used by the employees or the general public ~~shall not be granted in the absence of~~ must be designed with a flood warning system that provides adequate time for evacuation ~~if the area would be inundated to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood. if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional flood.~~
 - (3) 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 43.70(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.
 - (4) 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.~~
 - (5) 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 Zoning Map.~~
 - (6) Standards for ~~travel trailers and travel~~ recreational vehicles are contained in Section 43.73(c).
 - (7) ~~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. Standards for manufactured homes are contained in Section 43.73(a) and (b).~~
 - (8) 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~~

Comment [SR35]: acceptable but unnecessary language – essentially guidance to communities interested in LOMRs.

Comment [m36]: New Ord. Section 43.74 (c).

Comment [m37]: New Ord. Section 43.74.

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.

Comment [SR38]: Moved to 43.72 so that they apply across all districts.

Comment [SR39]: This new section is needed due to annexations into County areas.

43.71 GENERAL FLOODPLAIN DISTRICT

- (a) Permitted Uses The uses listed in Section 43.69(a) of this ordinance, Floodway District Permitted Uses, shall be permitted uses.
- (b) All other uses shall be subject to the floodway/flood fringe evaluation criteria specified in Section 43.71(c) below. Section 43.69 shall apply if the proposed use is determined to be in the Floodway District. Section 43.70 shall apply if the proposed use is determined to be in the Flood Fringe District.
- (c) Procedures for Floodway and Flood Fringe Determinations.
- (1) Upon receipt of an application for a permit or other approval within the General Floodplain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.
 - (2) If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information shall be consistent with accepted hydrological and hydraulic engineering standards and the standards in (c)(4) below.
 - (3) The determination of floodway and flood fringe shall include the following components, as applicable:
 - (aa) Estimate the peak discharge of the regional (1% chance) flood.
 - (bb) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - (cc) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot shall be required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
 - (4) The Zoning Administrator shall review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.
 - (5) Once the Floodway and Flood Fringe District Boundaries have been determined, the Zoning Administrator shall process the permit application consistent with the applicable provisions of Section 43.69 and 43.70 of this ordinance.

Comment [SR40]: State and federal rules establish standards for this determination but do not specify a procedure to be followed. (However, the community is required under 44CFR 60.3(b)(4) to "obtain, review and reasonably utilize" base flood elevation and floodway data.) The procedure shown here is one that DNR suggests that communities follow. DNR Floodplain Program staff can assist communities in obtaining relevant data and completing the determination.

43.7143.72 SUBDIVISIONS. ~~This section is not intended as a substitute for a comprehensive city or county subdivision ordinance. It can, however, be used as an interim control until the comprehensive subdivision ordinance can be amended to include necessary flood plain management provisions.~~

- (a) 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 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 Ordinance 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 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) 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.~~

Comment [SR41]: guidance language – not necessary, since subdivision standards can remain in this ordinance.

43.7243.73 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES. (a) 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.

- ~~(ab) Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Sections 43.69 and 43.70 of this ordinance. 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.~~

- ~~(b) 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~~

Comment [SR42]: See previous comment – optional and not necessary

43.7343.74 MANUFACTURED HOMES, AND MANUFACTURED HOME PARKS AND PLACEMENT OF RECREATIONAL VEHICLES. (a) New Manufactured Home Parks. New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 43.742 of this ordinance.

- ~~(a) Replacement Manufactured Homes - Existing Parks. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 43.70 of this ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 43.70(e)(1), then replacement manufactured homes will not be~~

allowed until the property owner(s) develops a flood warning emergency plan acceptable to the governing body.

(1)(5) 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.

(c) ~~Travel Trailers/Travel~~ Recreational Vehicles. ~~Travel trailers and travel vehicles~~ Recreational vehicles that do not ~~must~~ meet the exemption criteria specified in (1) below ~~or be treated as new structures shall be~~ subject to the provisions of this ordinance and as specifically spelled out in (3)-(4) below.

(1) Exemption - ~~Travel trailers and travel~~ Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the areas listed in (2) below and further they meet the following criteria:

- (aa) Have current licenses required for highway use.
- (bb) 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 ~~trailer-recreational vehicle~~ parks and the ~~travel trailer/travel vehicle has~~ no permanent structural type additions are attached to ~~it~~ the vehicle.
- (cc) The ~~travel trailer or travel~~ recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

(2) Areas Exempted For Placement of ~~Travel/~~ Recreational Vehicles:

- (aa) Individual lots or parcels of record.
- (aa) Existing commercial recreational vehicle parks or campgrounds.
- (cc) Existing condominium type associations.

(3) ~~Travel trailers and travel~~ Recreational vehicles exempted in (c)(1) above lose this exemption when development occurs on the parcel exceeding \$500 for ~~a structural addition to the travel trailer/travel vehicle or~~ an accessory structure such as a garage or storage building. The ~~travel trailer/travel~~ 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 use~~ restrictions specified in Sections 43.69 and 43.70 of this ordinance.

(4) New commercial ~~travel trailer or travel~~ recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

- (aa) ~~On A~~ Any new or replacement ~~travel trailer or travel~~ recreational vehicle ~~site will be allowed~~ in the ~~Floodway or Flood Fringe Districts, provided said trailer or the~~ vehicle and its contents ~~must be are~~ placed on fill above the Regulatory Flood Protection Elevation and ~~proper elevated adequate~~ road access to the site ~~exists must be provided~~ in accordance with Section 43.70(e)(1) of this ordinance. No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the

Comment [m43]: Typo – should be (bb).

Comment [m44]: In response to Comment 40, State model ordinance @ Section 9.33 references "minimal" investment. Given that it is practically difficult to monitor any form of specific value, staff would have no problem with adding language where the exemption is lost with any form of new site development or improvement. This does make it black or white.

Comment [SR45]: The city's ordinance seems to imply that a structural addition is OK if less than \$500. We consider any structural addition to disqualify the RV from the exemption (per (bb) above).

Comment [SR46]: Our requirement pertains to additions, but you can certainly restrict accessory structures and other site improvements to the same degree, and that also does make it simpler to enforce.

100-year or regional flood.

- (bb) Any new or replacement recreational vehicle site located in the Floodway District or as an alternative to (a) above in the Flood Fringe District, may be allowed as a conditional use in accordance with the following provisions and the provisions of Section 43.75(d) of the ordinance.
- The applicant must submit an emergency plan for the safe evacuation of all vehicles and people acceptable to the City Council. The plan shall demonstrate that adequate time and personnel exist to carry out an evacuation, and that the exemption provisions of Section 9.31 of this ordinance will be met; and
 - All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 43.73 of this ordinance.
 - Any fill placed in the floodway to meet the requirements of this section must not increase the flood stage of the regional (1% chance) flood.
 - All new or replacement travel trailers or travel vehicles not meeting the criteria of (aa) above may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of 43.74(d) of the ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel trailers or other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 43.70(e)(8) of this ordinance.

Comment [SR47]: We recommend that RVs in the floodway district are treated as conditional uses.

43.7443.75 ADMINISTRATION.

~~(a) Zoning Administrator.~~ A Zoning Administrator or other official designated by the governing body shall administer and enforce this ordinance. ~~If the Zoning Administrator finds a violation of the provisions of this ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 43.76 of the ordinance.~~

Comment [SR48]: This is covered under 43.77

~~(b)(a) Permit Requirements.~~ (1) Permit Required. A permit issued by the Zoning Administrator in conformity with the provisions of this ordinance shall be secured prior to the erection, addition, 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 change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.

- (2) 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: 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.
- (3) 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.

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

(5) 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 ordinance, and punishable as provided by Section 43.767 of this ordinance.

(6) 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 ordinance. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.

~~(7)~~ Record of First Floor Elevation. The City Engineer 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 flood plain. The City Engineer shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood-proofed.

~~(8)~~ Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator shall notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this shall suffice as adequate notice. A copy of the notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

~~(7)(9)~~ Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

(c)(b) Board of Adjustment. (1) Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law and Section 22.21.

(2) Administrative Review. The Board 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 ordinance.

~~(3)~~ Variances. ~~An application for a variance to the provisions of this ordinance shall be processed and reviewed in accordance with applicable state statutes and Section(s) [] of the zoning ordinance.~~

~~(4)~~ Adherence to State Floodplain Management Standards. A variance must not

Comment [SR49]: Variance additions meet FEMA requirements.

Comment [m50]: City Code Section 22.21 c.

~~allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.~~

~~(5) Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:~~

~~(aa) 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.~~

~~(bb) 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.~~

~~(cc) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.~~

~~(3)(6) The Board may authorize upon appeal in specific cases such relief or variance from the terms of this floodplain management ordinance where it appears that by reason of unique circumstances the strict enforcement of this ordinance would cause practical difficulties and strict conformity with the standards would be unreasonable, impractical, and not feasible under the circumstances. Variances granted by local governmental units must be consistent with the general purpose of these standards and the intent of applicable state and national laws and programs. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in the respective enabling legislation which 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.~~

~~(4)(7) Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board shall fix a reasonable time for a hearing in accordance with Section 22.21. The Board shall submit mailed notice of the application to the Commissioner of Natural Resources within 10 days of the Board's hearing in accordance with Minn. R. 6120.6200, subp. 1.~~

~~(5)(8) Decisions. The Board shall arrive at a decision on such appeal or variance within 45 days following receipt of the written appeal. In passing upon an appeal, the Board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator 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 Board shall give due consideration to the provisions of Section 43.74(d)(4) and may prescribe appropriate conditions and safeguards such as those specified in Section 43.74(d)(6), 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 variance is granted, shall be deemed a violation of this ordinance punishable under Section 43.76. A~~

Comment [m51]: New Ord. Section 43.75 (c)(4).

Comment [m52]: New Ord. Section 43.75(c)(6).

copy of all decisions granting variances or special permits under this floodplain management ordinance shall be forwarded ~~by mail~~ to the Commissioner of Natural Resources within ten (10) days of such action ~~in accordance with Minn. R. 6120.6200, subp. 1. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.~~

(6)(9) Appeals. Appeals from any decision of the Board may be made in accordance with Section 22.21(h).

Comment [m53]: Modify to (g).

(7)(10) Flood Insurance Notice and Record Keeping. The Zoning Administrator 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 for \$100 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.

(d)(c) Conditional Uses. The Board of Adjustment shall hear and decide applications for Conditional Uses permissible under this Ordinance in accordance with the provisions of Section 22.21.

- (1) Hearings. ~~Upon filing with the Board of Adjustment an application for a Conditional Use Permit, the~~ Board shall submit by mail to the Commissioner of Natural Resources a copy of ~~the any~~ application for a proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. ~~The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.~~
- (2) Decisions. The Board of Adjustment shall arrive at a decision on a conditional use within 45 days. In granting a Conditional Use Permit the Board shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 43.74(d)(6), 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 43.76. 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. ~~The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.~~
- (3) Procedures to be followed by the Board of Adjustment in Passing on Conditional Use Permit Applications within all Flood Plain Districts.
 - (aa) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Board 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; 2) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
 - (bb) Transmit one copy of the information described in subsection (aa) to the City Engineer for evaluating the proposed project in relation to flood

Comment [SR54]: If these BOA procedures are found elsewhere in zoning ordinance, they can be deleted and simply cross-referenced here.

Comment [m55]: New Ord. Section 43.75 (c)(6)

Comment [m56]: New Ord. Section 43.77.

heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters. The City Engineer may consult with any agency or persons in making such determinations.

- (cc) Based upon the technical evaluation of the City Engineer, the Board 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 Board of Adjustment Shall Be Based. In passing upon conditional use applications, the Board shall consider all relevant factors specified in other sections of this ordinance, and:
- (aa) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - (bb) 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.
 - (cc) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (dd) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (ee) The importance of the services provided by the proposed facility to the community.
 - (ff) The requirements of the facility for a waterfront location.
 - (gg) The availability of alternative locations not subject to flooding for the proposed use.
 - (hh) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (ii) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - (jj) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (kk) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - (ll) Such other factors which are relevant to the purposes of this Ordinance.
- (5) Time for Acting on Application. The Board shall act on an application in the manner described above within 45 days from receiving the application, except that where additional information is required pursuant to Section 43.74(d)(4) of this ordinance, the Board 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 ordinance, the Board shall attach

Comment [m57]: New Ord. Section 43.75 (c)(4).

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:

- (aa) Modification of waste treatment and water supply facilities.
 - (bb) Limitations on period of use, occupancy, and operation.
 - (cc) Imposition of operational controls, sureties, and deed restrictions.
 - (dd) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
 - (ee) 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.
- Ord. No. 3879 9/21/2011.

~~43.7543.76~~ NONCONFORMING USES.

- (a) A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions: Historic structures, as defined in Section 43.67(h) of this ordinance, are subject to the provisions of Sections 1 – 5 below.
- (1) No such structure, use, or occupancy shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.
 - (2) Any 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 through FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in (3) 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 Section 43.69 or 43.70 of this ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.
 - (4) If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

Comment [SR58]: Historic structures are defined under "substantial improvement" and are exempted from the limits on such improvements in (6) below.

- (5) If any nonconformity is substantially damaged, as defined in Section 43.67(h) of this ordinance, it shall not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Section 43.69 or 43.70 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.
- (6) If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 43.69, 43.70 or 43.71 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.
- (5)(7) Any substantial improvement, as defined in Section 43.67(h) of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 43.69 or 43.70 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

43.7643.77 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 of Winona 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.

- (5) 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.

43.78 AMENDMENTS

- (a) Floodplain Designation – Restrictions on Removal: 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 the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.
- (b) Amendments Require DNR Approval: All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.
- (a)(c) Map Revisions Require Ordinance Amendments. The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.3 of this ordinance.

Comment [m59]: Generally repeats 43.67 (d).
Can be fused into one?

Comment [SR60]: You're correct, I hadn't noticed that you have the same language in 43.67 (d). Item C is new, however and should be added – these standards can be in either location.