

City of East Bethel
Planning Commission Agenda
7:00 PM
Tuesday, November 17, 2015



Agenda

		<u>Item</u>
7:00 PM		1.0 Call to Order
7:02 PM	pg. 1	2.0 Adopt Agenda
7:03 PM	pg. 2-17	3.0 Approval of Meeting Minutes October 27 th , 2015 – Regular Meeting
7:05 PM	pg. 18-26	4.0 Public Hearing - Steve's Quality Tree Service , Home Occupation IUP 18817 Greenbrook Dr NE, PID# 33-33-23-12-0007, Rural Residential
7:20 PM	pg. 27-77	5.0 Public Hearing - Floodplain Ordinance; Repeal
7:50 PM		6.0 City Council Update
7:55 PM		7.0 Other Business
8:00 PM		8.0 Adjournment

EAST BETHEL PLANNING COMMISSION MEETING

October 27, 2015

The East Bethel Planning Commission met on October 27, 2015 at 7:00 PM for their regular meeting at City Hall.

MEMBERS PRESENT: Glenn Terry* Randy Plaisance Lorraine Bonin
* Chairperson Sherry Allenspach Eldon Holmes Tanner Balfany
Lou Cornicelli

ALSO PRESENT: Colleen Winter, Community Development Director
Ron Koller, City Council Member

1.0 Call to Order Mr. Terry called the East Bethel Planning Commission meeting to order at 7:00 PM.

2.0 Adopt Agenda **Mr. Terry motioned to adopt the agenda as written. Mr. Plaisance seconded the motion. All members were in favor; motion carried.**

3.0 Approval of August 25, 2015 Meeting Minutes Ms. Winter requested a correction to the meeting minutes, noting it says Brian Mundle is the City Council Liaison and it should say Ron Koller. Mr. Terry asked we have no recording secretary tonight? All right, any other corrections.

Mr. Holmes motioned to approve the minutes with corrections. Mr. Plaisance seconded the motion; all others in favor. Motion carried.

4.0 Loading Dock Specialist Home Occupation IUP

Background Information:

Owner/Property Location:

Erryn Magnusen, (dba Loading Dock Specialists)
22050 Quincy Street NE
East Bethel, MN 55092
PIN: 07-33-23-12-0002
Zoning: Rural Residential (RR)

Ms. Winter presented the staff report, indicating Mr. Magnusen, dba Loading Dock Specialists (LDS), has been in business for over twenty years and employs three full time employees and one part time/seasonal employee. LDS installs dock equipment for truck terminals throughout Minnesota and the five State area. All of the installation and service work takes place on the construction site and most of the equipment is sent directly to that site, with the exception of fragile electronic controls and miscellaneous installation hardware.

The day-to-day operations are as follows:

The employees leave their vehicles and pick up their work trucks and any miscellaneous parts in the morning, usually at 7:30 a.m., and leave for the job site and work for the day and then in the afternoon return to pick up their vehicles usually between 2-4:30 p.m. The operation is Monday to Friday.

Recommendation(s):

If the Planning Commission were to choose to recommend approval of the IUP, it should be subject to the 13 conditions detailed in the staff report.

Ms. Winter stated attached in your packet you will find a site plan drawing that indicates where this is located. She reported she had the opportunity to go to Mr. Magnusen's today and I did observe a number of vehicles parked outside as well as a large dumpster. She talked with Mr. Magnusen a little bit about that. So, that is a concern with the number of vehicles that are actually parked outside.

The Public Hearing was opened at 7:03 pm.

Bruce Roles, 21853 Quincy Street NE, stated he's got several comments about this business. First and foremost, it's a residential area and he doesn't need a heavy equipment storage yard at the corner of his street as all know how that can degrade property values. Based on Colleen's comments, he assumed none of the Commissioners personally visited the site. Mr. Holmes stated he drove by it today and took a look.

Mr. Roles stated his disappointment, noting he had served on the Planning Commission and would go to every site and 'lay his eyes' on it as pictures usually don't do justice. He stated this business has been existing for well over two years, maybe three years, and he doesn't know what prompted it to finally get to the point where it's getting a permit to operate. Mr. Roles stated if we haven't followed the rules up to this point and the City grants the permit for the business to exist, he doesn't know why anyone would expect the rules to be followed from this point forward. He noted Colleen has already addressed the equipment and if you look at the satellite picture in the packet, it does not come close to representing the equipment on the site. He suggested there are one and maybe more that he's never seen move and wonders if they are even operational. In addition, there is a large commercial dumpster outside the building and everything can be seen from the road, especially now that the leaves have dropped. Mr. Roles noted they have been operating in violation of City ordinances for a couple years and strongly recommended, as a resident on that street, to not allow this business and require it to move to an appropriate business location due to the impact it has on the residential area.

Mr. Holms asked Mr. Roles, since he used to be on the Planning Commission, why he didn't call City Hall before. Mr. Roles stated he has talked with the City Administrator a number of times over the last couple of years and was told there wasn't enough there to move it on to the next step. Mr. Roles stated there are no company logos on the trucks. He stated he's lived on Quincy Street since 1986 and is a long-time resident.

Mr. Plaisance asked about the level of traffic he's noticed that this business has generated. Mr. Roles stated it comes and goes but the traffic was most notable, maybe when there were more employees. Now because of his recent work schedule, he is gone before and returns after any of the traffic flow. He stated his bigger concern is the visual impact of this mature business that should be properly relocated and impact to property valuations. Mr. Roles described the comments he receives from visitors to his property asking what is going on with this business that looks like a heavy equipment storage yard. He suggested there are more than enough appropriate locations to which this business can relocate.

Loading Dock
Specialist Home
Occupation IUP

Mr. Terry noted with the Planning Commission's consideration, property values are somewhat immaterial as it is conditions that are detrimental to residential. Mr. Roles suggested that storage of heavy equipment is detrimental. Mr. Terry stated it still comes down to the basis of whether this business belongs there, not how it affects property values. Mr. Roles suggested it doesn't look like a business but looks like a residence and big parking lot storing functioning and nonfunctioning equipment and a big commercial dumpster container. He noted if all those things are removed and it looks like a residential property and a business can still function, he doesn't understand what the harm would be. Mr. Roles stated another concern is the industrial trucks stored, whether they are leaking, what is being thrown in the dumpster, and those types of details. Mr. Roles pointed out that City ordinances provide places for business to be and this is a mature 20+ year business that has been operating 'under the radar,' not a business trying to get off the ground. He suggested this business has had its opportunity to get situated and should now relocate.

No other members of the public were present to speak. The Public Hearing was closed at 7:11 pm.

Mr. Terry stated if this is a 20-year business but has been operating here only two years, he would ask where they operated the other 18 years.

Aaron Magnusen, applicant, stated Loading Dock has been working at this site since 1998 and there has not been a big expansion because three brothers own the business and are not interested in making it a huge production. He stated they don't have heavy equipment but do have a dumpster and after talking with Colleen, will relocate or cover it to meet Code. Mr. Magnusen stated they have five company vehicles and one will be removed but the others are day-to-day vehicles and located behind the tree line so they are not visible.

Mr. Plaisance referenced the Home Occupation Ordinance indicating, 'no more than three persons at least one of whom shall reside within the principle dwelling shall work at the home occupation's site.' He noted that Mr. Magnusen exceeds this condition. Ms. Winter stated yes, in addition to himself he has three other full-time employees and one part-time employee. But, again, that is if they work directly at that site and according to what Mr. Magnusen indicated, they park their vehicles there and then to go off site to work. She explained this is similar to the Pavement Resources consideration of a couple years ago.

Ms. Winter presented what would be required as far as in-home occupations and those conditions. (*Note: Ms. Winter's comments are identified in bold italics.*)

1. No more than three persons, at least one of whom shall reside within the principal dwelling, shall work at the home occupation site. ***Again, employees are parking their vehicles there so there is not anyone working at the home occupation site itself except for Mr. Magnusen.***
2. No traffic shall be generated by any home occupation in a significantly greater volume than would normally be expected from a single-family residence.
3. Any sign associated with the home occupation shall be in compliance with the East Bethel Sign Ordinance.

Loading Dock
Specialist Home
Occupation IUP

4. The home occupation shall not generate hazardous waste unless a plan for off-site disposal of the waste is approved. Documentation from MPCA or Anoka County Environmental Services regarding hazardous waste generation is required. *So, as part of the conditions, that would be one of the things that I would work with them on, is making sure that they got the proper documentation from Anoka County regarding any sort of hazardous waste.*
5. A home occupation at a dwelling with an on-site sewage treatment system shall only generate normal domestic household waste.
6. The home occupation shall not constitute, create, or increase a nuisance to the criteria and standards established in this ordinance.
7. There shall be no outdoor display or storage of goods, equipment, or materials for the home occupation. *Again, having a conversation with Mr. Magnusen. I expressed my concerns about the outside storage. He does have a pole barn there so there may be potential that he can put the vehicles inside that building.*
8. Parking needs generated by the home occupation shall be provided on-site. *That part we do want provided on site. We do not want them parking on the road.*
9. The area set aside for the home occupation in the principal structure shall not exceed 50 percent of the gross living area of the principal structure. *That does not apply in this case because they're operating out of a detached accessory structure.*
10. No structural alterations or enlargements shall be made for the sole purpose of conducting the home occupation.
11. There shall be no detriments to the residential character of the neighborhood due to the emission of noise, odor, smoke, dust, gas, heat, glare, vibration, electrical interference, traffic congestion, or any other nuisance resulting from the home occupation.
12. The area set aside in the attached or detached accessory structures shall not exceed whatever that accessory structure space is.
13. Applicant is required to follow all local building and fire codes.

Mr. Terry stated to the earlier question of why grant the permit, you can see with the conditions they need to follow them or they get revoked. There's more control than were they not going through this process.

Mr. Roles refuted some of the statements made, noting on the south side of the building there is the truck with a huge mounted boom crane that has never moved but is not shown in this picture. There is a manlift, industrial equipment, that is routinely sitting out next to the dumpster. Mr. Roles stated he understands it may be stored inside and if it doesn't look like a business, then he does not necessarily have a problem with it. With regard to being required to follow all local Codes, Mr. Roles asked whether the Fire Marshal will inspect the building for proper sprinkling and the plumbing facilities for off-site employees, or if they are using residential facilities within the house. He also asked what is needed for infrastructure to operate this business and who is monitoring that actually exists. To the point of the hazardous waste, Mr. Roles stated you can get a mitigation plan and he hopes that is followed because this business uses lubricants. He explained that as a mechanical engineer with a technical background, he hired guys like this to work on buildings

that he managed so he understands some of the equipment and products they use so he questions whether it is free of industrial wastes.

Mr. Roles stated they've admitted to being here the whole time and at the beginning it probably wasn't as obvious it was a business as it has been the last few years. He asked why it was not until now that we are following the rules and what suggests the rules will be followed going forward.

Mr. Terry stated to the last question, he would say if they were 'under the radar' before, that is no longer the case so that would be the difference.

Mr. Holmes asked what prompted this to be on the agenda. Ms. Winter answered Mr. Magnusen came forward and applied for an IUP through a complaint or Code violation with the Code Enforcement Officer going out and observing the business. She stated there were two properties in this neighborhood that had issues and then Mr. Magnusen came forward and applied for the IUP for his business.

Mr. Terry asked Ms. Winter if she saw the manlift and the boom truck while visiting the site. Ms. Winter stated she did not but did see three F-150 trucks and two commercial vans.

At the inquiry of a Commissioner, Mr. Magnusen described the dumpster location, noting it is next to the pole barn. Ms. Winter stated the dumpster was visible from the road when she was out there.

Mr. Terry asked if the pole barn is sufficient to store the equipment that is in question as far as being an eyesore. Mr. Magnusen stated there's no equipment that actually sits out, it's the vehicles and that's what they refer to as equipment, plus the dumpster. Everything else is usually in the pole shed or on a job site, besides his travel trailer, which he thinks he is allowed to have.

Ms. Allenspach asked if he had any concerns about the conditions of the permit. Mr. Magnusen stated he does not as he and Ms. Winter have gone through them and are willing to assure from this point forward it's taken care of. Ms. Allenspach asked if they can get the issues addressed. Mr. Magnusen answered in the affirmative.

Ms. Bonin stated one thing not being addressed is why the City is allowing this kind of business in a residential area. She felt when people move into a residential area, they have some right to expect it to be residential rather than commercial but has not heard anyone being concerned about that issue.

Mr. Terry stated in this case, the fact that their work is off site means to him that as long as they do things to maintain the residential character, it's not like they're operating a factory on the site. They're actually doing the labor off site and parking their personal vehicles.

Ms. Bonin stated that's the point, their equipment and vehicles are being parked there so that it doesn't look like a residential use. Mr. Terry stated they park three pick-up trucks that anyone might have. Ms. Bonin stated most don't have three

pick-up trucks in one family. Several Commissioners described their neighbors that have three or more trucks on their property.

Mr. Holmes stated when he visited the site he just glanced at the equipment and along the south side of the property he could see a lot of vehicles but did not know if they were for the business or family cars. Ms. Winter stated when she visited the site there were five parked down below and three in the driveway. Mr. Magnusen stated the three vehicles that were at the top are his personal vehicles and registered to him.

Mr. Holmes stated this business has been in operation for a while and should be growing. He asked if they've ever looked into finding a commercial spot. Mr. Magnusen stated they have not as it is a family-run business, not a large company, and when they moved to East Bethel it's not like they're on a quarter acre lot with houses on top of each other.

Mr. Terry asked what are the buildings located to the south. Mr. Magnusen stated the people who live to the south run a nursery. Mr. Balfany noted this is then not the only business on the street.

Mr. Balfany displayed a Google map on his cellular phone and asked Mr. Magnusen if that is what it looks like when vehicles are parked on site. Mr. Magnusen answered in the affirmative, noting the work vehicles are down below and parked in front of the sheds and those by the road are personal vehicles. Mr. Balfany described what was depicted on the Google map and stated it looks like there are a lot of trees. He asked if the only view is along the driveway. Mr. Magnusen stated it's hard to say because now the leaves are coming off but you can see it if you are looking for it. Otherwise, you have to be looking coming off Highway 74 and down the driveway. Ms. Winter confirmed it is observable from the road.

Mr. Balfany stated what's coming up a lot is visibility so at this point he starts to think about a privacy fence or some sort of obstructed fence to block the view of the vehicles. Mr. Plaisance felt that would almost make it a commercial site, to fence the front yard for equipment that nobody can see. Mr. Balfany concurred.

Mr. Plaisance stated this has been operating without a permit for 17 years and now all of a sudden the Commission is asked to approve a permit on faith that they'll follow the conditions. He stated he would much prefer to see conditions followed before entertaining a permit. Ms. Winter explained that usually after an IUP is approved, they have about one month to meet the conditions and then there is a final inspection and sign off. At that point, normally an IUP is for three years but if there is a level of concern, the Planning Commission can make that time period shorter. She stated additional appropriate conditions can also be recommended

Ms. Allenspach stated that is why she is inclined to approve, because even though it has been operating 'under the radar,' now it is not and now they must comply. She noted Mr. Magnusen is okay with complying and the City now has some leverage to assure the site will comply and things are done the way they should be for the neighborhood. She added that Mr. Magnusen will want to comply so he can continue the business from where he lives.

Loading Dock
Specialist Home
Occupation IUP

Mr. Terry asked if at the end of the IUP period, it is reviewed by staff or the Planning Commission. Ms. Winter explained if there are no problems with the IUP, it is typically renewed at the internal level. Mr. Terry stated if granted for one year instead of three, and if all went well for that one year, it could then be extended for three years. Ms. Winter stated the term is however the IUP is set up and it could be written into the IUP that it is for one year and then it has to come back before the Planning Commission or Council and set for a different time period. Or, if everything is fine it could be set up for an automatic renewal of three years. Ms. Winter stated as long as the conditions are not arbitrary, timeframes can be set and conditions placed to address any issues in the Home Occupation Ordinance or set additional conditions to address other concerns (i.e., noise, dust).

Mr. Terry stated his inclination, because this is not a start-up business with unknowns but rather a business that needs to meet conditions, to consider a one-year trial period to assure the conditions are met. Then thereafter, to put it back to a regular three-year cycle. Ms. Winter stated that is an option as a recommendation to forward to the Council.

Mr. Plaisance asked what kind of materials are being put into the waste disposal container, how often it is removed or replaced, and whether they could consider concealing it or removing it from the site. Mr. Magnusen stated it's for construction equipment, cardboard from boxes, and a company comes in once per month or when it is full. As to its location, if they have to put a net over it, or go with a smaller size in the pole shed, they are at the mercy of what they have to do to make it right.

Mr. Plaisance stated in trying to minimize the requirements and impact upon the applicant as well as conforming with concerns of the neighbors, if it is going to be a permanent thing, he would like to have a fenced enclosure around that particular piece so it can be accessed but not obviously a business or seen from the road. He stated he is also in favor of requiring a one-year review on this home occupation to make sure it conforms to the ordinance requirements.

Mr. Plaisance made a motion to recommend approval to the City Council of the Interim Use Permit for a one year term with the stated conditions for Erryn Magnusen/ dba as Loading Dock Specialist at 22050 Quincy St NE, East Bethel MN 55011, PIN 07-33-23-12-0002, plus additional conditions to place a fence enclosure around the waste disposal container or have it removed, to remove from visibility the equipment that has been stored there without a building a fence around the entire property. Ms. Allenspach seconded the motion.

Mr. Balfany described a minimal impact to the applicant to put in a six-foot or taller gated fence on the south side of the shed where the employee's vehicles can be parked. He asked whether the intent is to enclose or screen view of these vehicles. Mr. Plaisance stated his preference is to enclose so it is not visible from other sides of the property. He stated if there is only something in front, it could probably be seen from the nursery next door.

Mr. Plaisance stated his second concern would be if picked up once a month, if enclosed there would be no one who could get into it without serious concerns about

jumping into it, where somebody like a kid might get into it and get pulled away. He stated that is what he was thinking. Not only to remove visibility but to enclose it for safety reasons.

Mr. Cornicelli stated he has two points and may need a legal opinion. He felt that fencing a residential area constitutes a residential nuisance. He stated what he sees in his mind is where you pick up parts on Highway 65 that has a big giant fence in a commercial area. He does not view it any differently than that, a big fence that opens up so equipment can come and go, as being a commercial area. Mr. Cornicelli referenced the condition indicating, 'No more than three persons, at least one of whom shall reside within the principal dwelling, shall be employed by the home occupation site.' He stated it does not say, 'shall work at the home occupancy.' So if five people are employed by the home occupant, it doesn't really matter where they're working. It's more than three. Ms. Winter explained the City changed that language in the Code to say that no more than three persons can actually physically work at that site.

Mr. Terry stated with the fence, if it is a chain link fence with slats he would agree but if it is a fence that looks like a residential fence then he does not see how that's any different than someone who puts a fence around their yard.

Mr. Holmes asked if there are City regulations on how high that fence can be. Ms. Winter answered six feet. Mr. Holmes stated he has a problem with this and agrees with Mr. Cornicelli. He stated there could be a business in a residential area that could have 80 employees that drop their car off and leave. He asked if the City wants that and stated he does not think so. Mr. Holmes stated he is not in favor of this at all. He stated with soil contamination, we don't know what the employees' cars are doing and the only way he would be in favor of anything would be to grant one year at the property and after that they have to move to a commercial property. Mr. Holmes stated he thinks that's another option but this is too big a business for a residential property. He noted East Bethel has had a lot of problems with outdoor storage, outside buildings, outside vehicles sitting around, some that don't even have wheels, and it's against the rules yet we do nothing about it. Mr. Holmes stated it is now causing some problems.

Ms. Allenspach asked how many bedrooms are in the home. Mr. Magnusen answered three. Ms. Allenspach stated that house is built for six people, which means six vehicles at least. She stated every bedroom is built for two people and if every person that lives in the house has a vehicle, there could be six vehicles on that property and the City can't tell them if it's a car or pick-up truck.

Ms. Winter explained the ordinance says you can have no more than five personal vehicles on your property parked outside at any given time and they have to be licensed. What they count as part of that is not only cars and trucks but trailers are in that as well.

Mr. Terry stated the scenario then of having 80 employees parked there cannot be allowed. Ms. Winter concurred. Mr. Terry stated five vehicles is the limit of what can be parked outside and visible on a property. Mr. Holmes asked how do you rate when somebody has a party at their house for 20 people. Ms. Winter stated they are

Loading Dock
Specialist Home
Occupation IUP

not staying on the property. Mr. Terry stated this deals with a specific situation, not a wild scenario.

Discussion occurred relating to different scenarios on the number of cars that could be parked on a residential property. Mr. Holmes repeated his position and stated why he is against the request unless it is for one year and then they have to move to a commercial property.

By a show of hands, 4 voted in favor and 3 against (Bonin, Cornicelli, Holmes); motion carried. This item will go to the City Council on November 17, 2015, for consideration.

**5.0 Met Council
Thrive MSP
2014 Plan**

Ms. Winter presented the staff report, indicating on September 17, 2015, the City of East Bethel was given the 2015 System Statement, which is the framework for the Metropolitan Council Thrive MSP 2040 long-range plan. The City of East Bethel is required to complete a Comprehensive Plan by 2018. As part of the process if a community disagrees with elements of the System Statement, they have 60 days (until November 17th) to request a hearing before the Met Council's Land Use Advisory Committee.

Areas of concern in the System statement are specifically with our Land Use designation. Staff, Planning Commission and City Council have all had numerous discussions regarding development within the Corridor, which is the area from 181st Avenue NE on the south and 245th Avenue NE on the north, that stretch from south to north along Highway 65 and three-quarters mile on either side of Highway 65. This area is designated for sewer and water district and for densities of 3-5 units per acre. In addition there is a second area around Coon Lake designated for 3-5 units per acre. These are both shown in attachments that you have in your packet and I'll put them up on the screen shortly.

The other land use designation is Diversified Rural, which is outside of the corridor. In that, the System Statement that we received is that it is 4 units per 40 acres. This is something that we feel, as staff, is incorrect. We've met with Met Council staff back in August to specifically discuss the area outside the corridor and all parties agreed that it should have an overall density of 1 unit per 10 acres with the ability to develop 2.5 acre lots. The Diversified Rural does not appear to have that same flexibility.

Ms. Winter stated so, in other words, if the Comp Plan is approved under this scenario, you are 4 in 40. So, you are not able to subtract out your wetlands or any of those other designations and be able to give people the ability to build rural developments in this area.

Ms. Winter explained population projections, households, and required affordable housing are also part of the System Statement and warrant more discussion. The 4 in 40 designation is in contrast to really what they've proposed to be our population density. By 4 in 40, if we were to go with that, we've already exceeded what we can have for households so there's some real inconsistencies with that.

Ms. Winter pointed out that the City's neighbors, Ham Lake, Oak Grove, and Andover, have the community designation called Rural Residential. Rural Residential communities have residential patterns characterized by large lots and do not have plans to provide urban infrastructure such as centralized wastewater treatment.

Ms. Winter stated these communities have topographic development limitations and a development pattern with lot sizes that generally range from 1 to 2.5 acres. That is very, very consistent with what East Bethel has as well. They are expected to discourage growth in those Rural Residential patterns and encouraged to look at a 1 unit per 10 acre density. But, again, the big distinction is, in the 4 in 40, their basically saying that's where any development stops and you are tied to that. Whereas in the Rural Residential designation, you have the ability to do those rural developments, you just have to make sure that you're not exceeding the 1 per 10.

Ms. Winter stated for example, if we had a 40 acre piece and you subtract out the wetlands, and you're able to get maybe 20 lots on that, or less, overall if you take that along with everything else that's in that Rural Residential area, we're still going to be over 1 per 10. Right now, The City is at 1 per just over 11 acres. Anything outside of the corridor, if you subtract out the wetlands and the other places where you're not able to develop, we already exceed the 1 per 10 density. Ms. Winter asked does that make sense?

Ms. Bonin asked, when you're saying 1 per 10, you're talking about over all. You're not talking about one area. Ms. Winter stated that is correct, overall in that area. Ms. Bonin stated if less than that, then you have to have an area that's more open to balance it. Ms. Winter answered in the affirmative.

Ms. Winter displayed the map, noting it is a little hard to read and distinguish the colors. She pointed out that clearly Ham Lake, Andover, and Oak Grove has a little section that's Diversified Rural, as well as Nowthen, Ramsey, etc. are all in that Rural Residential. Where they simply have East Bethel as more of that Diversified Rural, which is essentially agriculture.

Ms. Winter stated in the Met Council area they have it differently. It looks like Linwood Township and Columbus follow that same designation. But, staff has had many conversations at the Planning Commission level that they don't feel it's correct. She stated she talked to Met Council staff and they said East Bethel still has the ability within its own local zoning control to be able to do the Rural Residential and develop at 2.5 acre lots. Ms. Winter stated she said that's all well and good but the problem is if we're not following our Comprehensive Plan, we can't do that legally. The whole land use development within a community is dictated by what the Comprehensive Plan says. So, we need to get this clarified. Ms. Winter stated she believes it needs to have that Rural Residential designation versus Diversified Rural.

Ms. Winter stated you may say there's no difference if you take 4 in 40 versus 1 in 10 but the distinction, again, is if we go with Rural Residential we still have the ability to have some development out in those areas that's non-sewered

development. So, we're not holding the remaining part of the community that's outside of our corridor for however long because someday there might be sewer and water there. We recognize that outside of the corridor there's not going to be sewer and water.

Ms. Winter stated she'd like discussion and confirmation from the Planning Commission that staff is looking at this correctly and also to forward a recommendation to the Council but she doesn't know if it will get to that simply because on a staff level, they will be able to work with Met Council and get this figured out. She noted the City has until the 16th so if the City has to appeal it, it would have to go before the Council at their next meeting.

Mr. Plaisance stated staff has had a conversation with Met Council and from his understanding, this was originally set up as being Diversified. It was supposed to be Rural Residential but it was not that way according to them. He asked what kind of response staff got from the Met Council when told that the City wants this to be Rural Residential instead of Diversified. Ms. Winter stated there are two things to be careful about. Zoning is our development tool so she wants to leave zoning out of it. Ms. Winter stated the City needs to look at land use and from a Met Council perspective, land use is all about density. In the case of the 4 in 40, they're basically saying you don't have the ability to develop beyond 4 houses in 40 acres. Where with a Rural designation, it's 1 per 10 and we've already exceed that with what's in the community now if we subtract out the wetlands. So, their point back to the City was they are really not changing it. It can stay Diversified Rural and the City can still do what they want to do. Ms. Winter explained that's not something she believes staff can do because what they're saying is you can then guide that locally. But no, if it's part of your Plan and you're requesting us to get a Plan approved, we can't guide it locally because then our Comprehensive Plan, zoning, or one of the tools will be contrary to what we have to get approved. She stated it would be much cleaner and much easier to go through this process now and to get the designation correct to begin with.

Mr. Plaisance stated his question still stands, they're saying they will not bother changing it, you can just ignore the rules at the City level if that's what you want to do. And, staff is saying no, we can't do that. He asked what we can do that convinces them the City needs the other designation rather than ignoring the rule and coming up with our own plan. Ms. Winter stated she does not want to ignore the rule because not only is that somewhat reckless but it's also the idea that it's contrary to what the demographics are telling us right now.

Ms. Winter stated if the Planning Commission can make a recommendation and forward it to the Council saying that based on the System Statement, we don't agree with the land use designation that they have here and they need to look at changing it. She stated that is the biggest thing. There are other things they have in the Plan but quite frankly the rest of it she didn't have so much of an issue with.

Ms. Winter stated they have a regional park trail, for example, going through East Bethel; they talk about transportation but in our area, from a transportation perspective, they basically delineated the highways. She explained housing is another issue as the Met Council tells us we need to have so many affordable

housing units and our number is a lot lower than other communities in the Metro. Ms. Winter explained there is a bit of inconsistency there because in one part it says 290 and in another it says 369 or 368 so we need to look at the affordable housing component as well. Those are manageable but the biggest one is this land use issue that needs to be resolved at this point.

Mr. Cornicelli asked about northern Washington County (Columbus, Sandia, Grant Township) that fall into the same category. Ms. Winter stated her conversations have largely been with Anoka County and she hasn't talked to anybody in Columbus or Hugo or Scandia, but could do so. Her conversations have been with Oak Grove, St. Francis, and Ham Lake. Mr. Cornicelli stated he was just curious and surmised they would have the same concerns. Ms. Winter stated they may have but Washington County is a bit different than Anoka County.

Mr. Plaisance stated when talking about passing this along to the City Council and encouraging them to make a recommendation back to Met Council, is the intent to get it done before the Comprehensive Plan by 2018. Ms. Winter stated she'd like it done before November 17, 2015, because it's a System Statement and the City has 60 days to appeal anything in the System Statement. She found this to be a critical piece that needs to be resolved. Ms. Winter stated she is somewhat confident it can get done at a staff level but if not, then it has to go before the Met Council's Land Use Advisory Committee. She stated it would be good for the City Council to know that the Planning Commission had this discussion.

Mr. Terry stated he's stuck on a much earlier concern, which is why the City is in this position with the Met Council dictating land use policies when it's our City. He felt it should be generated from within and asked why the City is trying to see if the Met Council will conform to what we're looking at. Ms. Allenspach stated that's what the Met Council does. Ms. Winter explained the City is within their jurisdiction. Mr. Terry stated it's not in their charter, which deals with water use and one other thing, not this but suddenly that's what they're doing.

Ms. Winter stated they've been doing it for a long time. Met Council has had land use plans and comprehensive plans and before Thrive MSP, was the 2030 Plan. If the City is part of Metropolitan Council it is required to update its Comprehensive Plan and go by what they are guiding. This is because they are the regional organization that is responsible for wastewater, water, resources, as well as for transportation. As part of that, they need to look at the long-term future of the region and decide where their resources are going and how to best plan the region.

Mr. Terry stated they're not just doing that but wanting to dictate how much affordable housing and densities. He stated they might want to know where the City is at or planning for but he would ask why they are dictating those conditions.

Ms. Bonin stated she is concerned about the affordable housing thing and asked why you would want to put people with few resources so far from the city. She found this made no sense and while there needs to be some, it would be difficult. She felt it encourages people to live beyond their means when they can't afford the things they have to have in order to live out here. They have to have good cars because most will live where they can't use public transportation.

Ms. Allenspach stated they don't supply public transportation, which is part of what you're saying, it makes it ridiculous. But as Colleen has said, it's what Met Council does and they've been telling communities for many, many years what they expect them to have for affordable housing and for many years, communities have fought it.

Ms. Bonin asked about push back and say that's not reasonable. Mr. Terry stated that should be market driven, not some person planning who's 100 miles away and wants to move 'chess pieces' around. Ms. Winter explained affordable housing is a much more political issue as you get the Legislature involved and they're saying we need to have much more affordable housing because all of people are telling them there's a huge lack of affordable housing. So, a lot of what Met Council is going to dictate on some of the policies is a direct reflection of what they're being told from a political standpoint.

Ms. Allenspach stated there's no doubt we need affordable housing in East Bethel as we need places for our seniors to live when they can't afford to live in their houses and for the young people so they don't move away from East Bethel. But, for the Met Council to dictate it this way, is a little difficult for the community.

Ms. Winter stated I didn't include the whole System Statement because I didn't want to print it all out but I did provide you with the ability in your packet to look at that. If we want to continue this discussion, we certainly can and if you want, I could bring back more information. Ms. Winter stated if it would be helpful to have a representative from Met Council staff to come to talk about it, it's certainly something we could ask them.

Ms. Allenspach asked who is our rep? Ms. Winter replied we have a new person now. Edward Reynoso is on the Board and he's out of Ham Lake. Our new sector rep is Eric and he just started. She explained we've been dealing with the manager of the planning department who has been very receptive to working with staff.

Mr. Balfany stated staff is looking for direction from us and I'm pretty sure, without speaking for everybody, but looking at the head nods and the way the conversation is going, without having a motion, I'd say you have our blessing, unless somebody wants to contradict that statement.

Mr. Terry stated I think we need to decide what's best for East Bethel and let them know that's where we're going.

Mr. Plaisance stated when you take into consideration all of the requirements that are coming down from Met Council as to what we're doing with the City, we certainly would want to encourage to have a designation that we're talking about. Since we're talking about how many people per acre we can have, we have sewer and water that they were involved with, and also the affordable housing. In order to get the affordable housing, you have to have property cheap enough to do that and to get that property down, you have to split those properties. Mr. Plaisance stated when you take in all of those considerations and the fact of how do we pay for all that, it also requires development to go along with it. He stated from his

standpoint, he would highly encourage putting that recommendation to the Metropolitan Council to have this to be the way we recommend to have it.

Mr. Terry stated in order to come anywhere close to meeting their ideas about affordable housing, the City needs to have established infrastructure that would justify that so let's not 'put the cart before the horse,' to use another metaphor.

6.0 Floodplain Ordinance

Ms. Winter displayed the a floodplain map and presented the staff report, indicating Federal Emergency Management Agency has recently published new floodplain maps and is requiring every community that participates in the Flood Insurance Management Program to adopt new maps and is recommending that guidelines be adopted as well.

Under the guidance of the Minnesota Department of Natural Resources (MnDNR), they are strongly encouraging communities adopt a Model Floodplain Ordinance.

Ms. Winter noted in the packet was the new floodplain map and it's displayed on the screen as well. She would like to bring a map to the next Planning Commission meeting and to call for a Public Hearing this evening for the next meeting. She noted, as a reminder, that both in November and December, our meetings are one week ahead of when they normally are. So, please note that the Planning Commission meeting will be on November 17th. At that time, I'll bring back what the differences are. Ms. Winter explained this is really nice, they've streamlined the language so it makes it a lot easier to deal with any floodplain that comes into the City.

Mr. Plaisance stated I don't see any difference between the current floodplain and the data for the 500 year. Is that correct? Ms. Winter explained the biggest difference, and what's really nice about the new floodplain maps, those areas that are not 'hatched' are actually areas that are in our existing Floodplain Ordinance. With the new maps, all of those areas will be taken out and no longer part of the floodplain.

Mr. Plaisance stated I realize we're going to cover this and assume we're going to have the Public Hearing. He stated he assumes it would be a benefit insurance-wise to current residents in these locations that would be removed from that 100-year floodplain. Ms. Winter indicated that is correct.

Mr. Holmes stated he used to live in an area where his house was in both a 50-year and 100-year floodplain and it made a big difference on your house insurance. He stated he didn't know there was a 500 year and asked who lives that long. Mr. Holmes explained if you are in a floodplain and it does flood for some reason and you don't have insurance, because it is designated as a floodplain, you get 'the big goose egg.' He stated this is important to some of the people.

Mr. Terry asked what is expected to be done at the Public Hearing? Ms. Winter explained it is required to hold a Public Hearing because the City is saying that the Ordinance currently in place regarding the floodplain will be revoked and staff will recommend a new ordinance be put in place to conform with FEMA and MnDNR

recommendations.

Mr. Holmes stated some of these involve the same body of water with some being 100 and some being 500. He asked what constitutes the difference when it's the same body of water. Ms. Winter agreed it is strange in some cases and explained their technology has changed as far as the maps they are using and maybe the elevations. Mr. Holmes stated with his old property, a blind man can say where the 100 year and the 50 year are because of the difference in height but when it's already standing water, two different floodplain years doesn't make sense. Ms. Winter stated by the next meeting she can have additional clarification on that issue.

Mr. Terry asked if there is significant change to language or just the map. Ms. Winter indicated there are some significant changes to the language.

Mr. Plaisance made a motion to have a Public Hearing at the Planning Commission Meeting of November 17, 2015, to cover the revised FEMA floodplain map and to update our ordinances for said ordinances. Mr. Holmes seconded the motion. All members were in favor; motion carried.

Mr. Holmes asked if everybody on this map will be notified. Ms. Winter stated the City is not required to notify them but sometimes their mortgage companies will notify them. The only time the City has to notify them is if they are now in a floodplain where they weren't before. She noted that as you can see from the map, everyone in an existing floodplain is still there and some folks that were in a floodplain will be removed, which is good news for them. So, it's probably going to be that their mortgage companies or title companies will probably notify them. Ms. Winter stated she expects East Bethel will be getting some phone calls after this is adopted.

Mr. Holmes asked if the City will have to have a display of this on our front window. Mr. Cornicelli stated that might be a good idea. Ms. Winter agreed it is a good idea and staff will also post it to the front page of the website to let people know. Ms. Allenspach stated that's nice, especially if a few of the major roads can be identified so people can determine where they are.

Mr. Holmes stated some of this could be very important and if you don't have it documented that it is being displayed or something at least in the City Hall window, it could cost somebody their house, their livelihood, if it did flood and they know nothing about it or have a chance to see it. At least they have a chance to see it through the window or come in during business hours. I would suggest that we do that.

Mr. Terry asked if he is correct to assume it would also include changes in the language of the ordinance. Ms. Winter answered in the affirmative.

7.0 City Council Report

Service Road Funding

Council Member Koller reported the Council had a fairly short meeting and worked on the advanced funding for the service road, which will go from our business area (around Aggressive Hydraulics) north to Viking (behind Our Saviors Church). Apparently, the State turned down our request so we're finding funding elsewhere and hopefully will start next spring.

Social Media Policy

Council Member Koller stated the Council is working on a Social Media Policy as there have been a couple problems on the internet with City employees making inappropriate postings.

Town Hall Meeting

Council Member Koller stated they hope to get the State Senator and Representative to the Town Hall Meeting so the format may be changed. Ms. Allenspach asked when is the next Town Hall Meeting. Ms. Winter responded November 19th.

8.0 Other Business
BR&E Program

Ms. Winter reported on the Business Retention & Expansion Program with the University of Minnesota. To date, they have interviewed 43 businesses and think that's a nice turn out and excellent response. The end results and culmination of everything will be the first quarter of 2016. Everyone will be invited to view the results, next steps, and two or three big projects the City will be working on.

9.0 Adjournment

Mr. Balfany moved to adjourn the meeting at 8:21 p.m. Mr. Terry seconded the motion; all members were in favor, motion carried.

Submitted by:

Carla Wirth

TimeSaver Off Site Secretarial Inc.



City of East Bethel Planning Commission Agenda Information

Date:

November 17, 2015

Agenda Item Number:

Item 4.0

Agenda Item:

Home Occupation - Interim Use Permit

Property Owner: Steve and Tricia Quale (dba Steve's Quality Tree Service)

Address: 18817 Greenbrook Dr NE, East Bethel, MN

PIN: 33-33-23-12-0007

Zoning: Rural Residential (RR)

Requested Action:

Consider approving an Interim use permit to Steve and Tricia Quale to operate a business out of a Detached Accessory Structure.

Background Information:

Mr. and Mrs. Quale own and operate a small tree trimming business, dba/Steve's Quality Tree Service. They just recently built a home in East Bethel and are interested in housing their equipment for the tree service at their residence in a detached Accessory Structure that they are currently in the process of building. They have two seasonal part-time employees from March through October. All equipment would be housed inside the detached Accessory Structure.

Attachments:

Attachment #1 – Draft IUP

Attachment #2 – Aerial photo (there is a home already located on this parcel, not reflected on aerial photo).

Attachment #3 – IUP application

Applicable Code Sections:

Appendix A, Zoning Code, General Development Regulations, Section 19

Rural Residential development

Recommendation(s):

If the Planning Commission were to choose to approve the IUP it should be subject to the following conditions:

Business Name: Steve and Tricia Quale

Location: 18817 Greenbrook Dr NE, East Bethel MN 55011, PIN 33-33-23-12-0007, Zoning Rural Residential, subject to the following conditions:

East Bethel’s Home Occupation Ordinance

1. No more than three persons, at least one of whom shall reside within the principal dwelling, shall work at the home occupation site.
2. No traffic shall be generated by any home occupation in a significantly greater volume than would normally be expected from a single-family residence.
3. Any sign associated with the home occupation shall be in compliance with the East Bethel Sign Ordinance.
4. The home occupation shall not generate hazardous waste unless a plan for off-site disposal of the waste is approved. Documentation from MPCA or Anoka County Environmental Services regarding hazardous waste generation is required.
5. A home occupation at a dwelling with an on-site sewage treatment system shall only generate normal domestic household waste unless a plan for off-site disposal of the waste is approved.
6. The home occupation shall not constitute, create, or increase a nuisance to the criteria and standards established in this ordinance.
7. There shall be no outdoor display or storage of goods, equipment, or materials for the home occupation.
8. Parking needs generated by the home occupation shall be provided on-site.
9. The area set aside for the home occupation in the principal structure shall not exceed 50 percent of the gross living area of the principal structure.
10. No structural alterations or enlargements shall be made for the sole purpose of conducting the home occupation.
11. There shall be no detriments to the residential character of the neighborhood due to the emission of noise, odor, smoke, dust, gas, heat, glare, vibration, electrical interference, traffic congestion, or any other nuisance resulting from the home occupation.
12. The area set aside for the home occupation in the attached or detached accessory structures or garages shall not exceed total accessory structure space.
13. Applicant is required to follow all local building and fire codes.

Planning Commission Action

Motion by: _____

Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____

Please note this is a DRAFT document and serves as an example of the final IUP.
Additional conditions can be imposed.

Number

CITY OF EAST BETHEL
ANOKA COUNTY, MINNESOTA
INTERIM USE PERMIT (IUP) AGREEMENT

Dated: November 12, 2015

Property Owner: Steven Jr and Tricia Quale
18817 Greenbrook Dr NE
Wyoming, MN 55092

Applicant: Steven Jr and Tricia Quale

Parcel Location: THAT PRT OF NW1/4 OF NE1/4 OF SEC 33 TWP 33
RGE 23 LYG ELY OF C/L OF CO RD NO 68 & N OF S
600 FT THEREOF, EX RD, SUBJ TO EASE OF REC

Parcel Number: 33-33-23-12-0007

Present Zoning District: Rural Residential

IUP REQUEST: approval of a home occupation to operate a business called Steve's Tree Service at 18817 Greenbrook Dr NE Wyoming, MN 55092.

PLANNING COMMISSION ACTION

A public hearing was held on November 17, 2015 at which all interested parties had the opportunity to be heard. Planning Commission recommended approval of the IUP request.

CITY COUNCIL ACTION

The City Council considered the matter at its meeting on _____ and approved the IUP request with conditions.

DECISION

The City Council hereby grants the IUP for a home-based business called Steve's Tree Service located at 18817 Greenbrook Dr NE, Wyoming, MN 55092, THAT PRT OF NW1/4 OF NE1/4 OF SEC 33 TWP 33 RGE 23 LYG ELY OF C/L OF CO RD NO 68 & N OF S 600 FT THEREOF, EX RD, SUBJ TO EASE OF REC, PIN 33-33-23-12-0007 subject to the following conditions:

CONDITIONS AND REQUIREMENTS

1. Home Occupation shall meet the specific home occupation standards set forth in the City Code Appendix A Section 10-18:
 - a. No more than three (3) persons, at least one (1) of whom shall reside within the principal dwelling, shall be employed by the Home Occupation.
 - b. No traffic shall be generated by any home occupation in a significantly greater volume than would normally be expected from a single-family residence.
 - c. Any sign associated with the home occupation shall be in compliance with the East Bethel City Code, Chapter 54. Signs. Home occupation signage must be no larger than two (2) square feet (City Code Chapter 54-4.3).
 - d. The home occupation shall not generate hazardous waste unless a plan for off-site disposal of the waste is approved.
 - e. A home occupation at a dwelling with an on-site sewage treatment system shall only generate normal domestic household waste unless a plan for off-site disposal of the waste is approved.
 - f. The home occupation shall not constitute, create, or increase a nuisance to the criteria and standards established in this ordinance.
 - g. There shall be no outdoor display or storage of goods, equipment, or materials for the home occupation.
 - h. Parking needs generated by the home occupation shall be provided on-site.
 - i. The area set aside for the home occupation in the principal structure shall not exceed 50 percent of the gross living area of the principal structure and the area set aside for the home occupation in the attached or detached accessory structures or garages shall not exceed total accessory structure space.
 - j. No structural alterations or enlargements shall be made for the sole purpose of conducting the home occupation.
 - k. There shall be no detriments to the residential character of the neighborhood due to the emission of noise, odor, smoke, dust, gas, heat, glare, vibration, electrical interference, traffic congestion, or any other nuisance resulting from the home occupation.
2. Home will not be used as a point of retail on site sales.
3. Violation of conditions and City Codes shall result in the revocation of the IUP.
4. The IUP shall be for a term of three (3) years, expiring _____, at which time, the applicant will be required to re-apply for an IUP.
5. All conditions must be met no later than _____. An IUP Agreement shall be signed and executed no later than _____. Failure to execute the IUP Agreement will result in the null and void of the IUP.



Home Occupation Location

Parcel Information

1 in = 376 ft

PIN: 333323120007
 Acres: 12.21
 Owner Name: QUALE JR STEVEN & QUALE TRICIA
 Address1: 1745 191ST AVE NW
 Address 2: EAST BETHEL, MN 55011

Site Address1:
 Site Address 2: EAT BETHEL, MN 55011-9523
 Zoning: RR
 Shoreland: Null
 Legal: THAT PRT OF NW1/4 OF NE1/4 OF SEC 33
 TWP 33 RGE 23 LYG ELY OF C/L OF CO RD NO 68
 & N OF S 600 FT THEREOF, EX RD, SUBJ TO
 EASE OF REC





2241 221st Ave. NE • East Bethel, MN 55011
Phone: (763) 367-7844 • Fax: (763) 434-9578

OFFICE USE ONLY
Date Rec'd: 11/12/15
By: AN
Fee \$: 450

INTERIM USE PERMIT (IUP) APPLICATION

Application Fee: \$150* Consulting Fee: _____ **Escrow: \$300***
The application fee is non-refundable. Escrow will be paid back upon completion of the IUP process.
Applicant is responsible for accrued consulting fees from the City Engineer, City Attorney, etc.
*Fee is subject to change per Resolution.

The application for an INTERIM USE PERMIT (IUP) is processed in three separate review steps:

- 1) CITY STAFF
(Applicant is required to meet with City Staff **prior** to submittal of the application.)
- 2) PLANNING COMMISSION
(Public hearing and recommendation to the City Council)
- 3) CITY COUNCIL
(No public hearing required)

DESCRIPTION OF APPLICATION: Tree Service

LOCATION: PID: _____ LEGAL: LOT: _____ BLOCK: _____ SUBDIVISION: _____

PROPERTY ADDRESS: 18817 Greenbrook Dr PRESENT ZONING: RR

PROPERTY OWNER: _____
 CONTACT NAME: Steve/Tricia Quale PHONE: 763-238-0336/763-234-4648
 ADDRESS: 18817 Greenbrook Dr PHONE: _____
 CITY/STATE/ZIP: _____ EMAIL: tricia.quale@gmail.com

APPLICANT: _____
 CONTACT NAME: Same as Property owner PHONE: _____
 ADDRESS: _____ PHONE: _____
 CITY/STATE/ZIP: _____ EMAIL: _____

I fully understand that I must meet with City Staff to review all submission requirements and conditions prior to official submission, and that all of the required information must be submitted at least thirty (30) days prior to the Planning/Zoning Commission and City Council scheduled meeting dates to ensure review by City Staff.

Steve Quale/Tricia Quale Steve Quale/Tricia Quale 11/12/15
 Property Owner Signature Printed Name Date

Revision Date: 1/2/2015 Plus Narrative * Tricia you can email the narrative to me. 1.
 Page 24 of 77

19. - Home occupations. – Please answer the questions in RED

- A. No more than three persons, at least one of whom shall reside within the principal dwelling, shall work at the home occupation site. – How many employees do you have and where do they park?
1-owner 1-2 workers - Park by pole building or behind Pines
- B. No traffic shall be generated by any home occupation in a significantly greater volume than would normally be expected from a single-family residence. – How often are trucks coming in and out of your residence for the tree business?
In the morning and late afternoon
- C. Any sign associated with the home occupation shall be in compliance with the East Bethel Sign Ordinance.
No Sign
- D. The home occupation shall not generate hazardous waste unless a plan for off-site disposal of the waste is approved. – Are you required to have any hazardous waste license?
NO
- E. A home occupation at a dwelling with an on-site sewage treatment system shall only generate normal domestic household waste unless a plan for off-site disposal of the waste is approved.
OK
- F. The home occupation shall not constitute, create, or increase a nuisance to the criteria and standards established in this ordinance.
OK
- G. There shall be no outdoor display or storage of goods, equipment, or materials for the home occupation. – Where are the vehicles and equipment for the home occupation going to be stored?
Pole building B
- H. Parking needs generated by the home occupation shall be provided on-site.
yes
- I. The area set aside for the home occupation in the principal structure shall not exceed 50 percent of the gross living area of the principal structure.
OK
- J. No structural alterations or enlargements shall be made for the sole purpose of conducting the home occupation. – Is the pole building for personal and business use? If you were not able to operate your business from this location, would you still be building a 3,000 sq. ft. pole building?
Personal and business use
- K. There shall be no detriments to the residential character of the neighborhood due to the emission of noise, odor, smoke, dust, gas, heat, glare, vibration, electrical interference, traffic congestion, or any other nuisance resulting from the home occupation.
OK
- L. The area set aside for the home occupation in the attached or detached accessory structures or garages shall not exceed total accessory structure space.
OK

(Ord. No. 49, Second Series, 4-2-2014)



1 in = 94 ft



Wetlands

-  Freshwater Emergent Wetland
-  Freshwater Forested/Shrub Wetland
-  Freshwater Pond
-  Lake
-  Riverine





City of East Bethel Planning Commission Agenda Information

Date: November 17, 2015

Agenda Item Number:

5.0

Agenda Item:

Revised FEMA floodplain

Requested Action:

Recommend adoption of Three District Floodplain Ordinance

Background Information:

Federal Emergency Management Agency has recently published new floodplain maps and is requiring every community that participates in the Flood Insurance Management program to adopt new maps and is recommending with the guidance on the MN Dept of Natural Resources that communities adopt a Model Floodplain Ordinance. Attached you will find the new Sample Floodplain Ordinance. Chapter 34 of the East Bethel Code of Ordinances should be repealed and Section 58 of Appendix A, Zoning Ordinance is replaced as presented.

Applicable Code Sections:

Chapter 34 – City of East Bethel Code of Ordinances -

https://www.municode.com/library/mn/east_bethel/codes/code_of_ordinances?nodeId=COOR_CH34FL

Section 58 – Appendix A, Zoning Ordinance -

https://www.municode.com/library/mn/east_bethel/codes/code_of_ordinances?nodeId=COOR_APXAZO_S58FLMAFPOVDI

Attachments:

1. Model Ordinance
2. DNR comments
3. Floodplain Maps

Recommendations:

The new maps and ordinance need to become official as of December 16, 2015 and Staff recommends that the Planning Commission approve and forward recommendation to the City Council.

Planning Commission Action

Motion by: _____

Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____



Minnesota Sample Floodplain Ordinance

Three District Ordinance

This sample ordinance includes the three primary types of floodplain districts: Floodway, Flood Fringe, and General Floodplain. It can be used in a variety of situations, where all three districts or only some of them are present.

Contents

Section 1.0 Statutory Authorization, Findings of Fact and Purpose

- 1.1 Statutory Authorization
- 1.2 Purpose

Section 2.0 General Provisions

- 2.1 How to Use This Ordinance
- 2.2 Lands to Which Ordinance Applies
- 2.3 Incorporation of Maps by Reference
- 2.4 Regulatory Flood Protection Elevation
- 2.5 Interpretation
- 2.6 Abrogation and Greater Restrictions
- 2.7 Warning and Disclaimer of Liability
- 2.8 Severability
- 2.9 Definitions
- 2.10 Annexations/Detachments

Section 3.0 Establishment of Zoning Districts

- 3.1 Districts
- 3.2 Compliance

Section 4.0 Floodway District

- 4.1 Permitted Uses
- 4.2 Standards for Floodway Permitted Uses
- 4.3 Conditional Uses
- 4.4 Standards for Floodway Conditional Uses

Section 5.0 Flood Fringe District

- 5.1 Permitted Uses
- 5.2 Standards for Flood Fringe Permitted Uses
- 5.3 Conditional Uses
- 5.4 Standards for Flood Fringe Conditional Uses

Section 6.0 General Floodplain District

- 6.1 Permitted Uses
- 6.2 Procedures for Floodway and Flood Fringe Determinations

Section 7.0 Land Development Standards

- 7.1 In General
- 7.2 Subdivisions
- 7.3 Building Sites

Section 8.0 Public Utilities, Railroads, Roads, and Bridges

- 8.1 Public Utilities
- 8.2 Public Transportation Facilities
- 8.3 On-site Water Supply and Sewage Treatment Systems

Section 9.0 Manufactured Homes, Manufactured Home Parks and Recreational Vehicles

- 9.1 Manufactured Homes
- 9.2 Recreational Vehicles

Section 10.0 Administration

- 10.1 Zoning Administrator
- 10.2 Permit Requirements
- 10.3 Variances
- 10.4 Conditional Uses

Section 11.0 Nonconformities

- 11.1 Continuance of Nonconformities

Section 12.0 Penalties and Enforcement

- 12.1 Violation Constitutes a Misdemeanor
- 12.2 Other Lawful Action
- 12.3 Enforcement

Section 13.0 Amendments

- 13.1 Floodplain Designation – Restrictions on Removal
- 13.2 Amendments Require DNR Approval
- 13.3 Map Revisions Require Ordinance Amendments

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

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

1.2 Purpose:

- 1.21 This ordinance regulates development in the flood hazard areas of East Bethel, Minnesota. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
- 1.22 National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.
- 1.23 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

SECTION 2.0 GENERAL PROVISIONS

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

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

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

- 2.21 The Floodway, Flood Fringe and General Floodplain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.

2.3 Incorporation of Maps by Reference: The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes the Flood Insurance Study for Anoka County, Minnesota, and Incorporated Areas and the Flood Insurance Rate Map enumerated below, all dated December

16, 2015 and all prepared by the Federal Emergency Management Agency. These materials are on file in the [Office of the City Administrator?]

- 270030070E
- 270030088E
- 270030089E
- 270030090E
- 270030095E
- 270030182E
- 270030184E
- 270030195E
- 270030205E
- 270030210E
- 270030215E
- 270030220E

- 2.4 **Regulatory Flood Protection Elevation:** The regulatory flood protection elevation (RFPE) is an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.
- 2.5 **Interpretation:** The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.
- 2.51 Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.
- 2.52 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.
- 2.6 **Abrogation and Greater Restrictions:** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- 2.7 **Warning and Disclaimer of Liability:** This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of East Bethel or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- 2.8 **Severability:** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.
- 2.9 **Definitions:** Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.
- 2.911 Accessory Use or Structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- 2.912 Base Flood Elevation – The elevation of the “regional flood.” The term “base flood elevation” is used in the flood insurance survey.

- 2.913 Basement – any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.
- 2.914 Conditional Use – a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:
- (a) Certain conditions as detailed in the zoning ordinance exist.
 - (b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
- 2.915 Critical Facilities – facilities necessary to a community’s public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.
- 2.916 Development – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- 2.917 Equal Degree of Encroachment – a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- 2.918 Farm Fence – A fence as defined by Minn. Statutes Section 344.02, Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.
- 2.919 Flood – a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
- 2.920 Flood Frequency – the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
- 2.921 Flood Fringe – that portion of the floodplain outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for Anoka County, Minnesota.
- 2.922 Flood Prone Area – any land susceptible to being inundated by water from any source (see “Flood”).
- 2.923 Floodplain – the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- 2.924 Floodproofing – a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- 2.925 Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

- 2.926 Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor.
- 2.927 Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”
- 2.928 Obstruction – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
- 2.929 One Hundred Year Floodplain – lands inundated by the “Regional Flood” (see definition).
- 2.930 Principal Use or Structure – all uses or structures that are not accessory uses or structures.
- 2.931 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.
- 2.932 Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”
- 2.933 Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.
- 2.934 Regulatory Flood Protection Elevation (RFPE) - an elevation not less than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.
- 2.935 Repetitive Loss: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.
- 2.936 Special Flood Hazard Area – a term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”
- 2.937 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Section 9.22 of this ordinance and other similar items.
- 2.938 Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- (b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" is as defined in 44 Code of Federal Regulations, Part 59.1.

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

SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS

3.1 Districts:

3.11 Floodway District. The Floodway District includes those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 2.3. For lakes, wetlands and other basins, the Floodway District includes those areas designated as Zone A or AE on the Flood Insurance Rate Map that are at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

3.12 Flood Fringe District. The Flood Fringe District includes those areas designated as floodway fringe on the Flood Insurance Rate Map adopted in Section 2.3, as being within Zone AE but being located outside of the floodway. For lakes, wetlands and other basins (that do not have a floodway designated), the Flood Fringe District includes those areas designated as Zone A or AE on the Flood Insurance Rate Map panels adopted in Section 2.3 that are below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

3.13 General Floodplain District. The General Floodplain District includes those areas designated as Zone A or Zone AE without a floodway on the Flood Insurance Rate Map adopted in Section 2.3, but not subject to the criteria in sections 3.11 and 3.12 above.

3.2 **Compliance:** Within the floodplain districts established in this ordinance, the use of any land, the use, size, type and location of structures on lots, the installation and maintenance of transportation, utility, water supply and waste treatment facilities, and the subdivision of land must comply with the terms of this ordinance and other applicable regulations. All uses not listed as permitted uses or conditional uses in Sections 4.0, 5.0 and 6.0, respectively, are prohibited.

In addition, a caution is provided here that:

3.21 New and replacement manufactured homes and certain recreational vehicles are subject to the general provisions of this ordinance and specifically Section 9.0.

- 3.22 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 ordinance and specifically Section 11.0.
- 3.23 All structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 3.24 As-built elevations for elevated or floodproofed structures must be certified by ground surveys and flood-proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this ordinance and specifically as stated in Section 10.0 of this ordinance.
- 3.25 Critical facilities, as defined in Section 2.915, are prohibited in all floodplain districts.

SECTION 4.0 FLOODWAY DISTRICT (FW)

4.1 **Permitted Uses:** The following uses, subject to the standards set forth in Section 4.2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- 4.11 General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- 4.12 Industrial-commercial loading areas, parking areas, and airport landing strips.
- 4.13 Open space uses, including but not limited to private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, hunting and fishing areas, and single or multiple purpose recreational trails.
- 4.14 Residential lawns, gardens, parking areas, and play areas.
- 4.15 Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit, and that the standards in Sections 4.41, 4.43(a) and 4.46 of this ordinance are met.

4.2 **Standards for Floodway Permitted Uses:**

- 4.21 The use must have a low flood damage potential.
- 4.22 With the exception of the uses listed in Section 4.15, the use must not obstruct flood flows or increase flood elevations and must not involve structures, fill, obstructions, excavations or storage of materials or equipment.
- 4.23 Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

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

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

- 4.32 Extraction and storage of sand, gravel, and other materials.
- 4.33 Marinas, boat rentals, docks, piers, wharves, and water control structures.
- 4.34 Storage yards for equipment, machinery, or materials.
- 4.35 Placement of fill or construction of fences that obstruct flood flows. Farm fences, as defined in section 2.918, are permitted uses.
- 4.36 Travel-ready recreational vehicles meeting the exception standards in Section 9.3.
- 4.37 Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

4.4 Standards for Floodway Conditional Uses:

- 4.41 All Uses. A conditional use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.
- 4.42 Fill; Storage of Materials and Equipment:
 - (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
 - (b) Fill, dredge spoil, and other similar materials deposited or stored in the floodplain must be protected from erosion by vegetative cover, mulching, riprap or other acceptable method. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.
 - (c) Temporary placement of fill, other materials, or equipment which would cause an increase to the stage of the 1% percent chance or regional flood may only be allowed if the City Council has approved a plan that assures removal of the materials from the floodway based upon the flood warning time available.
- 4.43 Accessory Structures:
 - (a) Accessory structures must not be designed for human habitation.
 - (b) Accessory structures, if permitted, must be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - (1) Whenever possible, structures must be constructed with the longitudinal axis parallel to the direction of flood flow; and
 - (2) So far as practicable, structures must be placed approximately on the same flood flow lines as those of adjoining structures.
 - (c) Accessory structures must be elevated on fill or structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the State Building Code. All floodproofed accessory structures must meet the following additional standards:
 - (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls; and
 - (2) Any mechanical and utility equipment in the structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed.
 - (d) As an alternative, an accessory structure may be internally/wet floodproofed to the FP-3 or FP-4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment and does not exceed 576 square feet in size. A

detached garage may only be used for parking of vehicles and limited storage. All structures must meet the following standards:

- (1) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - (2) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.
- 4.44 Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters are subject to the provisions of Minnesota Statutes, Section 103G.245.
- 4.45 A levee, dike or floodwall constructed in the floodway must not cause an increase to the 1% chance or regional flood. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.
- 4.46 Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

SECTION 5.0 FLOOD FRINGE DISTRICT (FF)

5.1 Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections 5.2. If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.

5.2 Standards for Flood Fringe Permitted Uses:

- 5.21 All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.
- (a) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.
 - (b) As an alternative to elevation on fill, an accessory structure that constitutes a minimal investment and that does not exceed 576 square feet in size may be internally floodproofed in accordance with Section 4.43.
- 5.22 The cumulative placement of fill or similar material on a parcel must not exceed 1,000 cubic yards, unless the fill is specifically intended to elevate a structure in accordance with Section 5.21 of this ordinance, or if allowed as a conditional use under Section 5.33 below.
- 5.23 The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.
- 5.24 The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- 5.25 Fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.

- 5.26 All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning /emergency evacuation plan acceptable to the City Council.
- 5.27 Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.
- 5.28 Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.
- 5.29 Flood fringe developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 5.30 Manufactured homes and recreational vehicles must meet the standards of Section 9 of this ordinance.

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

- 5.31 Any structure that is not elevated on fill or floodproofed in accordance with Section 5.21 of this ordinance.
- 5.32 Storage of any material or equipment below the regulatory flood protection elevation.
- 5.33 The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with Section 5.21 of this ordinance.

5.4 **Standards for Flood Fringe Conditional Uses:**

- 5.41 The standards listed in Sections 5.24 through 5.30 apply to all conditional uses.
- 5.42 Basements, as defined by Section 2.913 of this ordinance, are subject to the following:
 - (a) Residential basement construction is not allowed below the regulatory flood protection elevation.
 - (b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry floodproofed in accordance with Section 5.44 of this ordinance.
- 5.43 All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be floodproofed in accordance with the structurally dry floodproofing classifications in the State Building Code. Structurally dry floodproofing must meet the FP-1 or FP-2 floodproofing classification in the State Building Code, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures wet floodproofed to the FP-3 or FP-4 classification are not permitted.

- 5.44 The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.
- (a) The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the regional (1% chance) flood event.
 - (b) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the City Council.
 - (c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.
- 5.45 Storage of materials and equipment below the regulatory flood protection elevation must comply with an approved emergency plan providing for removal of such materials within the time available after a flood warning.
- 5.46 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:
- (a) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
 - (b) Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - (1) The minimum area of openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
 - (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.

SECTION 6.0 GENERAL FLOODPLAIN DISTRICT (GF)

6.1 Permitted Uses:

- 6.11 The uses listed in Section 4.1 of this ordinance, Floodway District Permitted Uses, are permitted uses.
- 6.12 All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 6.2 below. Section 4.0 applies if the proposed use is determined to be in the Floodway District. Section 5.0 applies if the proposed use is determined to be in the Flood Fringe District.

6.2 Procedures for Floodway and Flood Fringe Determinations:

- 6.21 Upon receipt of an application for a permit or other approval within the General Floodplain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.
- 6.22 If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in 6.23 below.
- 6.23 The determination of floodway and flood fringe must include the following components, as applicable:
 - (a) Estimate the peak discharge of the regional (1% chance) flood.
 - (b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - (c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries.
- 6.24 The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.
- 6.25 Once the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this ordinance.

SECTION 7.0 LAND DEVELOPMENT STANDARDS

- 7.1 **In General:** Recognizing that flood prone areas may exist outside of the designated floodplain districts, the requirements of this section apply to all land within the City of East Bethel.
- 7.2 **Subdivisions:** No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.

- 7.21 All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.
- 7.22 All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the City Council. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.
- 7.23 For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.
- 7.24 In the General Floodplain District, applicants must provide the information required in Section 6.2 of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.
- 7.25 If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:
 - (a) All such proposals are consistent with the need to minimize flood damage within the flood prone area,
 - (b) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
 - (c) Adequate drainage is provided to reduce exposure of flood hazard.

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

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

SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

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

8.2 Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 4.0 and 5.0 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to

the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

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

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

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

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

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

- (a) New and replacement manufactured homes must be elevated in compliance with Section 5 of this ordinance and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- (b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 7.22.

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

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

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

9.22 Criteria for Exempt Recreational Vehicles:

- (a) The vehicle must have a current license required for highway use.
- (b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.

- (c) No permanent structural type additions may be attached to the vehicle.
 - (d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.
 - (e) Accessory structures are not permitted within the Floodway District. Any accessory structure in the Flood Fringe District must be constructed of flood-resistant materials and be securely anchored, meeting the requirements applicable to manufactured homes in Section 9.22.
 - (f) An accessory structure must constitute a minimal investment
- 9.23 Recreational vehicles that are exempt in Section 9.22 lose this exemption when development occurs on the site that exceeds a minimal investment for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as new structures subject to the elevation and floodproofing requirements of Section 5.0 of this ordinance. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle should flooding occur.

SECTION 10.0 ADMINISTRATION

10.1 Zoning Administrator: A Zoning Administrator or other official designated by the City Council must administer and enforce this ordinance.

10.2 Permit Requirements:

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

- (a) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.
 - (b) Location of fill or storage of materials in relation to the stream channel.
 - (c) Copies of any required municipal, county, state or federal permits or approvals.
 - (d) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.
- 10.23 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.
- 10.24 Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.
- 10.25 Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.
- 10.26 Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- 10.27 Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

10.3 Variances:

- 10.31 Variance Applications. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and **Section 4** of this ordinance.
- 10.32 Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
- 10.33 Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
- (a) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

- (b) Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (c) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

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

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

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

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

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

10.4 Conditional Uses:

10.41 Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with **Section 4** of this ordinance.

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

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

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

10.44 Submittal of Hearing Notices to the Department of Natural Resources (DNR). The Zoning Administrator must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

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

SECTION 11.0 NONCONFORMITIES

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

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

- 11.12 Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 11.13 and 11.17 below.
- 11.13 If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of any nonconforming structure, then the entire structure must meet the standards of Section 4.0 or 5.0 of this ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor.
- 11.14 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance. The Assessor must notify the Zoning Administrator in writing of instances of nonconformities that have been discontinued for a period of more than one year.
- 11.15 If any nonconformity is substantially damaged, as defined in Section 2.938 of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0 or 5.0 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.
- 11.16 If any nonconforming use or structure experiences a repetitive loss, as defined in Section 2.935 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- 11.17 Any substantial improvement, as defined in Section 2.939 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 4.0 or 5.0 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

SECTION 12.0 PENALTIES AND ENFORCEMENT

- 12.1 **Violation Constitutes a Misdemeanor:** Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.
- 12.2 **Other Lawful Action:** Nothing in this ordinance restricts the City from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.
- 12.3 **Enforcement:** In responding to a suspected ordinance violation, the Zoning Administrator and City Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City 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.

- 12.31 When a 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 it is reasonably possible, this information will be submitted to the appropriate State Department of Natural Resources and Federal Emergency Management Agency regional office along with the city's plan of action to correct the violation to the degree possible.
- 12.32 The Zoning Administrator shall notify the suspected party of the requirements of this chapter 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 city. If the construction or development is already completed, 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.

SECTION 13.0 AMENDMENTS

- 13.1 **Floodplain Designation – Restrictions on Removal:** The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.
- 13.2 **Amendments Require DNR Approval:** All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.
- 13.3 **Map Revisions Require Ordinance Amendments.** The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.3 of this ordinance.

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

Adopted by the _____ City Council
(Community Name)

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

Attest: _____, Mayor
(Name of Elected Official)

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

Stamp With Community Seal:



Minnesota Sample Floodplain Ordinance

Three District Ordinance

This sample ordinance includes the three primary types of floodplain districts: Floodway, Flood Fringe, and General Floodplain. It can be used in a variety of situations, where all three districts or only some of them are present.

Contents

Section 1.0	Statutory Authorization, Findings of Fact and Purpose.....	1
1.1	Statutory Authorization	1
1.2	Purpose	1
Section 2.0	General Provisions	1
2.1	How to Use This Ordinance.....	1
2.2	Lands to Which Ordinance Applies	1
2.3	Incorporation of Maps by Reference	2
2.4	Regulatory Flood Protection Elevation	2
2.5	Interpretation	2
2.6	Abrogation and Greater Restrictions	2
2.7	Warning and Disclaimer of Liability	3
2.8	Severability.....	3
2.9	Definitions.....	3
2.10	Annexations/Detachments	6
Section 3.0	Establishment of Zoning Districts	6
3.1	Districts	6
3.2	Compliance	6
Section 4.0	Floodway District	
4.1	Permitted Uses.....	7
4.2	Standards for Floodway Permitted Uses	7
4.3	Conditional Uses	8
4.4	Standards for Floodway Conditional Uses	8
Section 5.0	Flood Fringe District.....	9
5.1	Permitted Uses.....	9
5.2	Standards for Flood Fringe Permitted Uses	10
5.3	Conditional Uses	11
5.4	Standards for Flood Fringe Conditional Uses.....	11
Section 6.0	General Floodplain District	12
6.1	Permitted Uses.....	12
6.2	Procedures for Floodway and Flood Fringe Determinations	12
Section 7.0	Land Development Standards.....	13

7.1	In General.....	13
7.2	Subdivisions	13
7.3	Building Sites	14
Section 8.0	Public Utilities, Railroads, Roads, and Bridges.....	14
8.1	Public Utilities	14
8.2	Public Transportation Facilities.....	14
8.3	On-site Water Supply and Sewage Treatment Systems	14
Section 9.0	Manufactured Homes, Manufactured Home Parks and Recreational Vehicles.....	15
9.1	Manufactured Homes	15
9.2	Recreational Vehicles.....	15
Section 10.0	Administration	16
10.1	Zoning Administrator	16
10.2	Permit Requirements.....	16
10.3	Variances.....	17
10.4	Conditional Uses	19
Section 11.0	Nonconformities	20
11.1	Continuance of Nonconformities.....	20
Section 12.0	Penalties and Enforcement.....	21
12.1	Violation Constitutes a Misdemeanor	21
12.2	Other Lawful Action	21
12.3	Enforcement	21
Section 13.0	Amendments	21
13.1	Floodplain Designation – Restrictions on Removal	21
13.2	Amendments Require DNR Approval	22
13.3	Map Revisions Require Ordinance Amendments	22

Ordinance Language	Commentary
<p>SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE</p> <p>1.1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter [394/462] delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the <u>(City Council/ Board of Commissioners)</u> of _____, Minnesota, does ordain as follows.</p> <p>1.2 Purpose:</p> <p>1.21 This ordinance regulates development in the flood hazard areas of _____. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.</p> <p>1.22 National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community’s eligibility in the National Flood Insurance Program.</p> <p>1.23 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.</p>	<p><i>Mandatory language. The zoning enabling statute reference is Chapter 394 for counties and Chapter 462 for cities and townships. “Governing body” is the City Council or County or Township Board.</i></p> <p><i>Mandatory language</i></p> <p><i>1.23 is optional language referencing the natural beneficial functions of floodplains.</i></p>
<p>SECTION 2.0 GENERAL PROVISIONS</p> <p>2.1 How to Use This Ordinance: This ordinance adopts the floodplain maps applicable to <u>(Community)</u> and includes three floodplain districts: Floodway, Flood Fringe, and General Floodplain.</p> <p>2.11 Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in Sections 4 or 5 will apply, depending on the location of a property.</p> <p>2.12 Locations where Floodway and Flood Fringe districts are not delineated on the floodplain maps are considered to fall within the General Floodplain district. Within the General Floodplain district, the Floodway District standards in Section 4 apply unless the floodway boundary is determined, according to the process outlined in Section 6. Once the floodway boundary is determined, the Flood Fringe District standards in Section 5 may apply outside the floodway.</p> <p>2.2 Lands to Which Ordinance Applies: This ordinance applies to all lands within the jurisdiction of <u>(Community)</u> shown on the Official Zoning Map and/or the attachments to the map as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts.</p> <p>2.21 The Floodway, Flood Fringe and General Floodplain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any</p>	<p><i>The types of floodplain zones present in a community will vary, depending on hydrologic conditions and the level of detail of the applicable maps.</i></p> <p><i>If the General Floodplain District (the A zone or other zones without a defined floodway) is not present within the community, references to it, including the provisions of Section 6, may be deleted but Section 6 should be “reserved for future use” (i.e., in case a future annexation adds an A zone).</i></p> <p><i>2.21 is optional – if the community has a zoning ordinance – as most do – it’s helpful to define these districts as overlay districts. If</i></p>

Ordinance Language	Commentary
<p>other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.</p>	<p><i>not, then delete this statement and other overlay references.</i></p>
<p>2.3 Incorporation of Maps by Reference: The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes the Flood Insurance Study for _____ County, Minnesota, and Incorporated Areas, dated _____ and the Flood Insurance Rate Map panels enumerated below, dated _____, all prepared by the Federal Emergency Management Agency. These materials are on file in the <u>(list location where maps will be filed – i.e., City Clerk’s office)</u>. <u>(list all map panels here)</u></p>	<p><i>Mandatory language. Each community must adopt the Flood Insurance Study and specific map panels that encompass its boundaries. Under Minnesota Rules 6120.5700, these materials are considered attachments to the Zoning Map.</i></p> <p><u><i>Listing of maps will vary by jurisdiction and map type.</i></u></p> <ul style="list-style-type: none"> • <i>For communities with older maps, such as Flood Hazard Boundary Maps, in addition to Flood Insurance Rate Maps, these maps should also be listed in Section 2.3.</i> • <i>For counties, the map index may be used in lieu of listing all the map panels individually.</i> • <i>Cities may need to adopt other map panels to encompass areas that may be annexed in the future. Counties and townships may need to adopt city map panels to encompass areas that may be detached from cities. See Section 2.10.</i>
<p>2.4 Regulatory Flood Protection Elevation: The regulatory flood protection elevation (RFPE) is an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.</p>	<p><i>Optional - Reiterates information in the (mandatory) definition of this term in Section 2.9. The RFPE can be increased beyond one foot to provide enhanced flood protection.</i></p> <p><i>In A-O zones, add more detailed language: “Within the AO Zone, the RFPE is an elevation no lower than [the number shown on the FIRM] above the highest adjacent grade of an existing structure or proposed structure or a proposed structural addition.”</i></p>
<p>2.5 Interpretation: The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.</p> <p>2.51 Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.</p> <p>2.52 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the <u>(Planning Commission/Board of Adjustment)</u> and to submit technical evidence.</p>	
<p>2.6 Abrogation and Greater Restrictions: It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances</p>	

Ordinance Language	Commentary
<p>inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.</p>	
<p>2.7 Warning and Disclaimer of Liability: This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of (<i>Community</i>) or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.</p>	
<p>2.8 Severability: If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.</p>	<p><i>This statement not needed if already included in zoning ordinance</i></p>
<p>2.9 Definitions: Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.</p>	<p><i>These definitions may already exist as part of zoning ordinance, but check for consistency.</i></p>
<p>2.911 Accessory Use or Structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.</p>	<p><i>Definitions are mandatory unless otherwise indicated.</i></p>
<p>2.912 Base Flood Elevation – The elevation of the “regional flood.” The term “base flood elevation” is used in the flood insurance survey.</p>	<p><i>Optional definition</i></p>
<p>2.913 Basement – any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.</p>	
<p>2.914 Conditional Use – a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:</p> <p>(a) Certain conditions as detailed in the zoning ordinance exist.</p> <p>(b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.</p>	<p><i>Optional definition – check against zoning ordinance. Some local ordinances – and the state rules that apply to floodplains – use the older term “special use.”</i></p>
<p>2.915 Critical Facilities – facilities necessary to a community’s public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.</p>	<p><i>Optional definition – see the (optional) regulation of critical facilities in Section 3.25.</i></p>
<p>2.916 Development – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.</p>	<p><i>This definition means that many land alteration activities are regulated and may require permits.</i></p>
<p>2.917 Equal Degree of Encroachment – a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.</p>	

Ordinance Language	Commentary
2.918 Farm Fence – A fence as defined by Minn. Statutes Section 344.02, Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.	<i>Optional definition – to be used if this type of farm fence is to be exempted from permit requirements</i>
2.919 Flood – a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.	<i>Optional definition</i>
2.920 Flood Frequency – the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.	<i>Optional definition</i>
2.921 Flood Fringe – that portion of the floodplain outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for <i>(Local Unit)</i> , Minnesota.	<i>For cities mapped as part of county-wide flood insurance study, the county name should be inserted here.</i>
2.922 Flood Prone Area – any land susceptible to being inundated by water from any source (see “Flood”).	<i>Optional definition – see provisions of Section 7 on flood prone areas</i>
2.923 Floodplain – the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.	
2.924 Floodproofing – a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.	
2.925 Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.	
2.926 Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor.	
2.927 Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”	
2.928 Obstruction – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.	<i>Optional definition</i>
2.929 One Hundred Year Floodplain – lands inundated by the “Regional Flood” (see definition).	
2.930 Principal Use or Structure – all uses or structures that are not accessory uses or structures.	<i>Optional definition</i>
2.931 Reach – a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made	<i>Optional definition</i>

Ordinance Language	Commentary
<p>obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.</p>	
<p>2.932 Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”</p>	
<p>2.933 Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.</p>	
<p>2.934 Regulatory Flood Protection Elevation (RFPE) - an elevation not less than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.</p>	<p><i>RFPE: The one-foot elevation is mandated by state law, but a higher elevation can yield increased protection.</i></p>
<p>2.935 Repetitive Loss: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.</p>	<p><i>Repetitive Loss: This is an optional definition linked to the optional provision for repetitive loss properties in Section 11.16.</i></p>
<p>2.936 Special Flood Hazard Area – a term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”</p>	
<p>2.937 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Section 9.22 of this ordinance and other similar items.</p>	
<p>2.938 Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.</p>	
<p>2.939 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:</p> <p>(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</p>	<p><i>“Start of construction” and “historic structure” are defined in 44 Code of Federal Regulations 59.1.</i></p>

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

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

Ordinance Language	Commentary
<p>for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.</p>	
<p>4.3 Conditional Uses: The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 10.4 of this ordinance and further subject to the standards set forth in Section 4.4, if otherwise allowed in the underlying zoning district or any applicable overlay district.</p>	<p><i>Note that these conditional uses are <u>optional</u> for the community but, if allowed, must meet the standards in Sections 4.4. Communities are encouraged to select only those conditional uses that are appropriate for their conditions.</i></p>
<p>4.31 Structures accessory to the uses listed in 4.1 above and the uses listed in 4.32 - 4.37 below.</p>	
<p>4.32 Extraction and storage of sand, gravel, and other materials.</p>	
<p>4.33 Marinas, boat rentals, docks, piers, wharves, and water control structures.</p>	
<p>4.34 Storage yards for equipment, machinery, or materials.</p>	<p><i>Optional statement in 4.35 allows typical farm fences such as barbed wire fences that don't obstruct flood flows as permitted uses. See also Section 10.21(c).</i></p>
<p>4.35 Placement of fill or construction of fences that obstruct flood flows. Farm fences, as defined in section 2.918, are permitted uses.</p>	
<p>4.36 Travel-ready recreational vehicles meeting the exception standards in Section 9.3.</p>	<p><i>Section 4.36 is optional: we recommend treating recreational vehicles as conditional uses so that road access and warning systems are carefully reviewed to ensure public safety in times of flooding.</i></p>
<p>4.37 Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.</p>	
<p>4.4 Standards for Floodway Conditional Uses:</p>	
<p>4.41 All Uses. A conditional use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.</p>	<p><i>Note that flood control projects intended to remove areas from the floodway to allow development of single or multiple structures are not permitted unless a Letter of Map Revision (LOMR) can be obtained to change the floodway boundary. Contact DNR Floodplain Program staff for further information.</i></p>
<p>4.42 Fill; Storage of Materials and Equipment:</p>	
<p>(a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.</p>	
<p>(b) Fill, dredge spoil, and other similar materials deposited or stored in the floodplain must be protected from erosion by vegetative cover, mulching, riprap or other acceptable method. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.</p>	<p><i>4.42 (a) and (b) must be included if deposition or storage of fill is allowed in the floodway</i></p>
<p>(c) Temporary placement of fill, other materials, or equipment which would cause an increase to the stage of the 1% percent chance or regional flood may only be allowed if the <i>(Governing Body)</i> has approved a plan that assures removal of the materials from the floodway based upon the flood warning time available.</p>	<p><i>Alternative (c) is an optional alternative allowing temporary storage of fill or other materials that could increase flood stage, suitable for locations where adequate flood warning times will be available to allow removal of materials.</i></p>
<p>4.43 Accessory Structures:</p>	
<p>(a) Accessory structures must not be designed for human habitation.</p>	
<p>(b) Accessory structures, if permitted, must be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:</p>	<p><i>If accessory structures are to be allowed in the floodway, items (a) through (c) are required.</i></p>

Ordinance Language	Commentary
<p>(1) Whenever possible, structures must be constructed with the longitudinal axis parallel to the direction of flood flow; and</p> <p>(2) So far as practicable, structures must be placed approximately on the same flood flow lines as those of adjoining structures.</p> <p>(c) Accessory structures must be elevated on fill or structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the State Building Code. All floodproofed accessory structures must meet the following additional standards:</p> <p>(1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls; and</p> <p>(2) Any mechanical and utility equipment in the structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed.</p> <p>(d) As an alternative, an accessory structure may be internally/wet floodproofed to the FP-3 or FP-4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment and does not exceed 576 square feet in size. A detached garage may only be used for parking of vehicles and limited storage. All structures must meet the following standards:</p> <p>(1) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and</p> <p>(2) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.</p>	<p><i>Subsection (d) is optional language allowing for wet floodproofing of small accessory structures that constitute a minimal investment.</i></p>
<p>4.44 Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters are subject to the provisions of Minnesota Statutes, Section 103G.245.</p>	<p><i>Optional provision providing notice that work in public waters requires a DNR permit.</i></p>
<p>4.45 A levee, dike or floodwall constructed in the floodway must not cause an increase to the 1% chance or regional flood. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.</p>	
<p>4.46 Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.</p>	
<p>SECTION 5.0 FLOOD FRINGE DISTRICT (FF)</p>	
<p>5.1 Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections</p>	<p><i>If underlying zoning district(s) are present (as in most communities) the second sentence</i></p>

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

Ordinance Language	Commentary
standards of Section 9 of this ordinance.	<i>further information.</i>
<p>5.3 Conditional Uses: The following uses and activities may be allowed as conditional uses, if allowed in the underlying zoning district(s) or any applicable overlay district, following the procedures in Section 10.4 of this ordinance. Conditional uses must meet the standards in Sections 5.24 through 5.30 and Section 5.4.</p>	<p><i>As with conditional uses in the floodway, conditional uses in the flood fringe are optional – communities should determine which of these uses are needed and appropriate in their floodplain areas.</i></p>
<p>5.31 Any structure that is not elevated on fill or floodproofed in accordance with Section 5.21 of this ordinance.</p>	
<p>5.32 Storage of any material or equipment below the regulatory flood protection elevation.</p>	
<p>5.33 The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with Section 5.21 of this ordinance.</p>	
<p>5.4 Standards for Flood Fringe Conditional Uses:</p>	
<p>5.41 The standards listed in Sections 5.24 through 5.30 apply to all conditional uses.</p>	
<p>5.42 Basements, as defined by Section 2.913 of this ordinance, are subject to the following:</p> <p>(a) Residential basement construction is not allowed below the regulatory flood protection elevation.</p> <p>(b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry floodproofed in accordance with Section 5.44 of this ordinance.</p>	
<p>5.43 All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be floodproofed in accordance with the structurally dry floodproofing classifications in the State Building Code. Structurally dry floodproofing must meet the FP-1 or FP-2 floodproofing classification in the State Building Code, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures wet floodproofed to the FP-3 or FP-4 classification are not permitted.</p>	
<p>5.44 The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.</p> <p>(a) The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the regional (1% chance) flood event.</p> <p>(b) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the <u>(Governing Body)</u>.</p>	<p><i>Optional provisions to be used if placement of this amount of fill is regulated as a conditional use.</i></p>

Ordinance Language	Commentary
<p>(c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.</p> <p>5.45 Storage of materials and equipment below the regulatory flood protection elevation must comply with an approved emergency plan providing for removal of such materials within the time available after a flood warning.</p> <p>5.46 RESERVED FOR OPTIONAL ALTERNATIVE ELEVATION METHODS</p>	
<p>SECTION 6.0 GENERAL FLOODPLAIN DISTRICT (GF)</p> <p>6.1 Permitted Uses:</p> <p>6.11 The uses listed in Section 4.1 of this ordinance, Floodway District Permitted Uses, are permitted uses.</p> <p>6.12 All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 6.2 below. Section 4.0 applies if the proposed use is determined to be in the Floodway District. Section 5.0 applies if the proposed use is determined to be in the Flood Fringe District.</p> <p>6.2 Procedures for Floodway and Flood Fringe Determinations:</p> <p>6.21 Upon receipt of an application for a permit or other approval within the General Floodplain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.</p> <p>6.22 If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in 6.23 below.</p> <p>6.23 The determination of floodway and flood fringe must include the following components, as applicable:</p> <p>(a) Estimate the peak discharge of the regional (1% chance) flood.</p> <p>(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.</p> <p>(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within</p>	<p><i>Alternative elevation methods such as the use of stilts, pilings, parallel walls, etc. may be appropriate in certain circumstances, provided that communities are able to provide a high level of monitoring and enforcement. Contact DNR floodplain staff for the applicable language.</i></p>
	<p><i>If the General Floodplain District (the A zone or the AE, AO or AH zones without a defined floodway) is not present within the community, delete the contents of this section and retitle it "Reserved for Future Use" (i.e., in case a future annexation adds an A zone).</i></p> <p><i>State and federal rules establish standards for this determination but do not specify a procedure to be followed. (However, the community is required under 44 CFR 60.3(b)(4) to "obtain, review and reasonably utilize" base flood elevation and floodway data.) The procedure shown here is one that DNR suggests that communities follow. DNR Floodplain Program staff can assist communities in obtaining relevant data and completing the determination.</i></p>

Ordinance Language	Commentary
<p>the reach must be assumed in computing floodway boundaries.</p> <p>6.24 The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.</p> <p>6.25 Once the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this ordinance.</p>	<p><i>Federal rules require that communities assess the cumulative effects of floodway encroachments on both sides of a stream. Contact Floodplain Program staff for assistance in making this assessment.</i></p>
<p>SECTION 7.0 LAND DEVELOPMENT STANDARDS</p>	
<p>7.1 In General: Recognizing that flood prone areas may exist outside of the designated floodplain districts, the requirements of this section apply to all land within (<i>Community</i>).</p>	<p><i>Section 7.1 is optional – this and related provisions in 7.25 and 7.3 are designed to enable communities to manage flood risks in unmapped but flood-prone areas (i.e., wetlands, ditches, isolated basins). If these standards are not needed, Section 7 can be retitled “Subdivisions.”</i></p>
<p>7.2 Subdivisions: No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.</p>	<p><i>The subdivision requirements in Section 7.21 – 7.24 are mandatory. These provisions can be integrated into a city or county subdivision ordinance, where one exists. Note that manufactured home and recreational vehicle parks are treated as subdivisions.</i></p>
<p>7.21 All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.</p>	
<p>7.22 All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the (<i>Governing Body</i>). The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.</p>	
<p>7.23 For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.</p>	
<p>7.24 In the General Floodplain District, applicants must provide the information required in Section 6.2 of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.</p>	
<p>7.25 If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:</p> <p>(a) All such proposals are consistent with the need to minimize flood damage within the flood prone area,</p> <p>(b) All public utilities and facilities, such as sewer, gas, electrical, and</p>	<p><i>7.25 is optional, to be used in conjunction with 7.1.</i></p>

Ordinance Language	Commentary
<p>water systems are located and constructed to minimize or eliminate flood damage, and</p> <p>(c) Adequate drainage is provided to reduce exposure of flood hazard.</p> <p>7.3 Building Sites If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:</p> <p>(a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;</p> <p>(b) Constructed with materials and utility equipment resistant to flood damage;</p> <p>(c) Constructed by methods and practices that minimize flood damage; and</p> <p>(d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.</p>	<p><i>7.3 is optional, to be used in conjunction with 7.1.</i></p>
<p>SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES</p>	
<p>8.1 Public Utilities: All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.</p>	
<p>8.2 Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 4.0 and 5.0 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.</p>	
<p>8.3 On-site Water Supply and Sewage Treatment Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they must not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the state’s current statewide standards for on-site sewage treatment systems is considered to be in compliance with this Section.</p>	

Ordinance Language	Commentary
<p>SECTION 9.0 MANUFACTURED HOMES, MANUFACTURED HOME PARKS, AND RECREATIONAL VEHICLES.</p>	
<p>9.1 Manufactured Homes: New manufactured home parks and expansions to existing manufactured home parks are prohibited in any floodplain district. For existing manufactured home parks or lots of record, the following requirements apply:</p> <p>9.11 Placement or replacement of manufactured home units is prohibited in the Floodway District.</p> <p>9.12 If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of Section 5 of this ordinance and the following standards.</p> <p>(a) New and replacement manufactured homes must be elevated in compliance with Section 5 of this ordinance and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.</p> <p>(b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 7.22.</p>	<p><i>This subsection is mandatory; the remainder of Section 9.0 is optional but recommended if manufactured home parks are located in any floodplain districts.</i></p> <p><i>Section 9 is revised to recognize MN Department of Health rules (Section 4630.0200), which prohibit mobile home parks and recreational camping areas in flood-prone areas. Placement or replacement of manufactured home units may be allowed in existing manufactured home parks or on lots of record.</i></p>
<p>9.2 Recreational Vehicles: New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be treated as new structures meeting the requirements of this ordinance.</p> <p>9.21 Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the following areas and meet the criteria listed in Section 9.22:</p> <p>(a) Individual lots or parcels of record.</p> <p>(b) Existing commercial recreational vehicle parks or campgrounds.</p> <p>(c) Existing condominium-type associations.</p> <p>9.22 Criteria for Exempt Recreational Vehicles:</p> <p>(a) The vehicle must have a current license required for highway use.</p> <p>(b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.</p> <p>(c) No permanent structural type additions may be attached to the vehicle.</p> <p>(d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.</p> <p>(e) Accessory structures are not permitted within the Floodway</p>	<p><i>These exemption criteria are required if recreational vehicles are allowed within any floodplain district. If this section is not used, recreational vehicle placement must be explicitly prohibited in floodplain districts.</i></p> <p><i>9.22(e) is optional. Recreational vehicles in existing campgrounds may be allowed within the Floodway District, if defined as a</i></p>

Ordinance Language	Commentary
<p>District. Any accessory structure in the Flood Fringe District must be constructed of flood-resistant materials and be securely anchored, meeting the requirements applicable to manufactured homes in Section 9.22.</p> <p>(f) An accessory structure must constitute a minimal investment</p> <p>9.23 Recreational vehicles that are exempt in Section 9.22 lose this exemption when development occurs on the site that exceeds a minimal investment for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as new structures subject to the elevation and floodproofing requirements of Section 5.0 of this ordinance. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle should flooding occur.</p>	<p><i>permitted or conditional use, but we recommend they be treated as a temporary use, without accessory structures and with an emergency plan in place.</i></p> <p><i>9.22 (f) and 9.23 are optional. Communities may apply a monetary limit such as \$500 as a threshold for a “minimal investment,” recognizing that this threshold will vary from place to place.</i></p>
<p>SECTION 10.0 ADMINISTRATION</p>	<p><i>Many of the standards and procedures in this section are likely to exist in other parts of the community’s zoning ordinance, and may be cross-referenced rather than repeated here. However, the community must be able to demonstrate that these procedures or comparable ones are in place.</i></p>
<p>10.1 Zoning Administrator: A Zoning Administrator or other official designated by the <u>(Governing Body)</u> must administer and enforce this ordinance.</p>	
<p>10.2 Permit Requirements:</p>	<p><i>The term “Zoning Administrator” is used throughout this section for ease of reference, but in some communities the City Clerk or other official may fill this role.</i></p>
<p>10.21 Permit Required. A permit must be obtained from the Zoning Administrator prior to conducting the following activities:</p> <p>(a) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.</p> <p>(b) The use or change of use of a building, structure, or land.</p> <p>(c) The construction of a dam, fence, or on-site septic system, although a permit is not required for a farm fence as defined in this ordinance.</p> <p>(d) The change or extension of a nonconforming use.</p> <p>(e) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.</p> <p>(f) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.</p> <p>(g) Relocation or alteration of a watercourse - including new or replacement culverts and bridges), unless a public waters work permit has been applied for.</p> <p>(h) Any other type of “development” as defined in this ordinance.</p>	<p><i>The exemption for farm fences in (c) is optional.</i></p>
<p>10.22 Application for Permit. Permit applications must be submitted to the Zoning Administrator on forms provided by the Zoning Administrator. The permit application must include the following as applicable:</p>	<p><i>Any change in the course, current or cross-section of public waters requires a public waters work permit from the DNR under MN Stat. 103G.245.</i></p> <p><i>This section may cross-reference any other permitting requirements in the zoning ordinance.</i></p>

Ordinance Language	Commentary
<ul style="list-style-type: none"> (a) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit. (b) Location of fill or storage of materials in relation to the stream channel. (c) Copies of any required municipal, county, state or federal permits or approvals. (d) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application. 	
<p>10.23 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.</p>	
<p>10.24 Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.</p>	
<p>10.25 Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.</p>	
<p>10.26 Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).</p>	
<p>10.27 Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.</p>	
<p>10.3 Variances:</p>	
<p>10.31 Variance Applications. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and Section(s) _____ of the zoning ordinance/code.</p>	<p><i>Cross-reference all sections of the zoning ordinance that regulate processing and review of variance applications. Section 10.3 only contains DNR/FEMA – mandated regulatory & notification provisions.</i></p>
<p>10.32 Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower</p>	<p><i>Communities that administer zoning ordinances (including floodplain ordinances)</i></p>

Ordinance Language	Commentary
<p>degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.</p> <p>10.33 Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:</p> <ul style="list-style-type: none"> (a) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result. (b) Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances. (c) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. 	<p><i>must establish a board of adjustment to hear appeals of the ordinance, including variance requests. In many communities, the city council, county board, or planning commission serves as the board of adjustment. If a community does not have existing variance procedures or a board of adjustment, contact Floodplain Program staff for sample ordinance language.</i></p> <p><i>The language in Section 10.33 (a – c) is language required by FEMA and must be adopted verbatim. Note specifically that the reference to “exceptional hardship” in (b)(ii) must remain in the ordinance, although it has been replaced by the term “practical difficulties” in state zoning enabling statutes.</i></p>
<p>10.34 Flood Insurance Notice. The Zoning Administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and 2) Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.</p>	<p><i>Section 10.34 is required by FEMA.</i></p>
<p>10.35 General Considerations. The community may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:</p> <ul style="list-style-type: none"> (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments; (b) The danger that materials may be swept onto other lands or downstream to the injury of others; (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions; (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner; (e) The importance of the services to be provided by the proposed use to the community; (f) The requirements of the facility for a waterfront location; (g) The availability of viable alternative locations for the proposed use that are not subject to flooding; (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future; 	<p><i>Section 10.35 is optional but recommended as guidance for communities in reviewing variance applications. The same factors are recommended for review of conditional use applications, below.</i></p>

Ordinance Language	Commentary
<ul style="list-style-type: none"> (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area; (j) The safety of access to the property in times of flood for ordinary and emergency vehicles; (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site. 	
<p>10.36 Submittal of Hearing Notices to the Department of Natural Resources (DNR). The <i>(designated body/community official)</i> must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least ten days’ notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.</p>	
<p>10.37 Submittal of Final Decisions to the DNR. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.</p>	
<p>10.38 Record-Keeping. The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.</p>	
<p>10.4 Conditional Uses:</p>	
<p>10.41 Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with Section (s) _____ of the zoning ordinance/code.</p>	<p><i>Cross-reference any conditional use procedures in the zoning ordinance, if these exist. If not, contact Floodplain Program staff for administrative language.</i></p>
<p>10.42 Factors Used in Decision-Making. In passing upon conditional use applications, the <i>(Governing Body)</i> must consider all relevant factors specified in other sections of this ordinance, and those factors identified in Section 10.35 of this ordinance.</p>	<p><i>Section 10.42 is optional but recommended as guidance for decisions on conditional uses (and variances, as noted above).</i></p>
<p>10.43 Conditions Attached to Conditional Use Permits. The <i>(Governing Body)</i> may attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> (a) Modification of waste treatment and water supply facilities. (b) Limitations on period of use, occupancy, and operation. (c) Imposition of operational controls, sureties, and deed restrictions. (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures. (e) Floodproofing measures, in accordance with the State Building Code and this ordinance. The applicant must submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors 	<p><i>Section 10.43 is also optional; conditions are intended to be specific to the particular site and proposed use.</i></p>

Ordinance Language	Commentary
<p>for the particular area.</p> <p>10.44 Submittal of Hearing Notices to the Department of Natural Resources (DNR). The <i>(designated body/community official)</i> must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days’ notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.</p> <p>10.45 Submittal of Final Decisions to the DNR. A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.</p>	
<p>SECTION 11.0 NONCONFORMITIES</p>	
<p>11.1 Continuance of Nonconformities: A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.939(b) of this ordinance, are subject to the provisions of Sections 11.11 – 11.16 of this ordinance.</p>	
<p>11.11 A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 11.12 below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.</p>	<p><i><u>Buildings and structures within the Floodway District may not be enlarged or expanded. In some cases, a floodway area can be filled without causing any rise in flood stage. In such cases, a Letter of Map Revision may be obtained that changes the floodway boundary, placing the area in the Flood Fringe. Contact Floodplain Program staff for details.</u></i></p>
<p>11.12 Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 11.13 and 11.17 below.</p>	
<p>11.13 If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of any nonconforming structure, then the entire structure must meet the standards of Section 4.0 or 5.0 of this ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor.</p>	<p><i>Section 11.13 is optional but recommended, in order to gradually eliminate nonconformities over time. Note that Section 11.17 refers to “substantial improvement,” which is tracked over a one-year period.</i></p>
<p>11.14 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance. The Assessor must notify the Zoning Administrator in writing of instances of nonconformities that have been discontinued for a period of more than one year.</p>	<p><i>Section 11.14 reflects an optional provision in statute (462.357.1e(1) and 394.36) – local government may impose reasonable conditions on the nonconforming use or structure. Many communities have adopted similar provisions in their zoning ordinances.</i></p>
<p>11.15 If any nonconformity is substantially damaged, as defined in Section 2.938 of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0 or 5.0 will apply depending upon whether the use or structure is in the</p>	<p><i>Section 11.15 is specific to floodplain uses in state and federal statute, as distinct from the standard provisions for nonconformities in the Chapters 394 and 462.</i></p>

Ordinance Language	Commentary
<p>Floodway or Flood Fringe, respectively.</p> <p>11.16 If any nonconforming use or structure experiences a repetitive loss, as defined in Section 2.935 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.</p> <p>11.17 Any substantial improvement, as defined in Section 2.939 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 4.0 or 5.0 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.</p>	<p><i>Section 11.16 is optional but recommended, in order to gradually eliminate nonconformities that are frequently damaged but not to the "50%" level.</i></p> <p><i>Section 11.17 is a mandatory federal requirement. As defined, "substantial improvement" is monitored over a one-year period.</i></p>
<p>SECTION 12.0 PENALTIES AND ENFORCEMENT</p>	
<p>12.1 Violation Constitutes a Misdemeanor: Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.</p> <p>12.2 Other Lawful Action: Nothing in this ordinance restricts the (<i>Community</i>) from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.</p>	
<p>12.3 Enforcement: Violations of the provisions of this ordinance will be investigated and resolved in accordance with the provisions of Section(s) (<i>list relevant sections</i>) of the zoning ordinance/code. In responding to a suspected ordinance violation, the Zoning Administrator and (<i>Governing Body</i>) 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 (<i>Community</i>) 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.</p>	<p><i>Cross-reference any sections of the zoning ordinance that deal with enforcement procedures. If such provisions don't exist, contact Floodplain Program staff for sample language.</i></p>
<p>SECTION 13.0 AMENDMENTS</p>	
<p>13.1 Floodplain Designation – Restrictions on Removal: The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.</p>	

Ordinance Language	Commentary
<p>13.2 Amendments Require DNR Approval: All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.</p> <p>13.3 Map Revisions Require Ordinance Amendments. The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.3 of this ordinance.</p>	

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

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

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

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

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

Stamp With Community Seal:





