

## Chapter 54

### **FLOOD AREA ZONING<sup>1</sup>**

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<sup>1</sup> **Cross references:** Buildings and building regulations, ch. 18; health and sanitation, ch. 58; parks and recreation, ch. 86; planning, ch. 94; subdivisions, ch. 110; utilities, ch. 126; zoning, ch. 130; manufactured homes and trailers, § 130-1241.

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## ARTICLE I. GENERAL PROVISIONS<sup>2</sup>

### **Sec. 54-1. Title of chapter.**

This chapter shall be known as the Floodplain Zoning Ordinance for the City of Evansville, Wisconsin.

(Code 1986, § 20.04, Ord. 2006-10)

### **Sec. 54-2. Statutory authority.**

This chapter is adopted pursuant to the authorization contained in Wis. Stats. §§ 62.23 and the requirements of § 87.30.

(Code 1986, § 20.01, Ord. 2006-10)

### **Sec. 54-3. Legislative findings.**

Uncontrolled development and use of the floodplains, rivers or streams of the city would adversely affect the public health, safety, convenience and general welfare and impair the tax base.

(Code 1986, § 20.02, Ord. 2006-10)

### **Sec. 54-4. Purpose of chapter.**

The purpose of this chapter is to provide a uniform basis for the preparation, implementation and administration of sound floodplain regulations for all floodplains within the city to:

- (1) Protect life, health and property.
- (2) Minimize expenditures of public moneys for costly flood control projects.
- (3) Minimize rescue and relief efforts generally undertaken at the expense of the taxpaying public.
- (4) Minimize business interruptions, which usually result in the loss of local income.
- (5) Minimize damage to public facilities on the floodplains, such as water mains, sewer lines, streets and bridges.
- (6) Minimize the occurrence of future flood blight areas on floodplains.
- (7) Discourage the victimization of unwary land and home buyers.

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<sup>2</sup> Originally from Code 1986, § 14.03, amended by Ord. 2006-10.

- (8) Prevent increases in regional flood heights that could increase flood damage and may result in conflicts or litigation between property owners.
- (9) Discourage the development in a floodplain if there is any practicable alternative to locate the activity, use, or structure outside of the floodplain.

(Code 1986, § 20.03, Ord. 2006-10)

### **Sec. 54-5. Definitions.<sup>3</sup>**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this chapter shall have the same meaning as they have at common law and to give this chapter it's most reasonable application.

*A zones* means those areas shown on the official floodplain zoning map which would be inundated by the regional flood. These areas may be numbered or unnumbered A zones. The A zones may or may not reflect flood profiles, depending on the availability of data for a given area.

*Accessory structure or use* means a facility, structure, building, or use which is accessory or incidental to the principal use of a property, structure or building.

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year, as published by the Federal Emergency Management Agency as part of a flood insurance study and depicted on a flood insurance rate map.

*Basement* means any enclosed area of a building having it's sub-grade (ie, below ground level) on all sides.

*Building.* See *Structure.*

*Bulkhead line* means a geographic line along a reach of navigable water that has been adopted by city ordinance and approved by the state department of natural resources pursuant to Wis. Stats. § 30.11, and which allows limited filling between this bulkhead line and the original ordinary high-water mark, except where such filling is prohibited by the floodway provisions of this chapter.

*Certificate of compliance* means a certification by the zoning administrator stating that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this chapter.

*Channel* means a natural or artificial watercourse with a definite bed and banks to confine and conduct the normal flow of water.

*Crawlways* or *crawl space* means an enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

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<sup>3</sup> **Cross references:** Definitions generally, § 1-2.

*Deck* means an unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

*Department* means the state department of natural resources.

*Development* means any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures, or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation, mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials; and the installation, repair, or removal of public or private sewage disposal systems or water supply facilities.

*Dry land access* means a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.

*Encroachment* means any fill, structure, building, use or development in the floodway.

*Existing manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale on which the construction of facilities for servicing the lots (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads and the construction of streets) is completed before the effective date of the ordinance from which this chapter is derived.

*Expansion to existing manufactured home park* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be placed. This includes installation of utilities, construction of streets, and either final site grading or the pouring of concrete pads.

*Federal Emergency Management Agency (FEMA)* means the federal agency that administers the National Flood Insurance Program.

*Flood insurance rate map (FIRM)* means a map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

*Flood and flooding* mean a general and temporary condition of partial or complete inundation of normally dry land areas caused by:

- (1) The overflow or rise of inland waters.
- (2) The rapid accumulation or runoff of surface waters from any source.
- (3) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior.

- (4) The sudden increase caused by an unusually high water level in a natural body of water accompanied by a severe storm or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

*Flood frequency* means the probability of a flood occurrence. A flood frequency is generally determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring on the average once in a specified number of years or as a percent chance of occurring in any given year.

*Flood fringe* means that portion of the floodplain outside of the floodway which is covered by floodwater during the regional flood. It is generally associated with standing water rather than flowing water.

*Flood hazard boundary map* means a map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program until superseded by a flood insurance study and a flood insurance rate map.

*Flood insurance study* means a technical engineering examination, evaluation and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and regional flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A zones. Flood insurance rate maps that accompany the flood insurance study form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

*Flood profile* means a graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

*Flood protection elevation* means an elevation two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see *Freeboard* .)

*Flood storage* means those floodplain areas where storage of floodwater has been taken into account in reducing the regional flood discharge.

*Floodplain* means that land which has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes the floodway and the flood fringe and may include other designated floodplain areas for regulatory purposes.

*Floodplain island* means a natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

*Floodplain management* means the full range of public policy and action for ensuring wise use of floodplains. It includes everything from the collection and dissemination of flood data to the acquisition of floodplain lands and the enactment and administration of codes, ordinances and statutes for land use in the floodplain.

*Floodproofing* means any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding for the purpose of reducing or eliminating flood damage.

*Floodway* means the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

*Freeboard* means a flood protection elevation requirement designed as a safety factor which is usually expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for the effects of any factors that contribute to flood heights greater than those calculated. These factors include but are not limited to ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.

*Habitable structure* means any structure or portion thereof used for human habitation.

*Hearing notice* means publication or posting meeting requirements of Wis. Stats. ch. 985. Class 1 notice is the minimum required for appeals, published once at least one week before the hearing. Class 2 notice is the minimum required for all zoning ordinances and amendments, including map amendments, published twice, once each week consecutively, the last at least one week before the hearing. Local ordinances or bylaws may require additional notice exceeding these minimums.

*High flood damage potential* means damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

*Historic structure* means any structure that is either:

1. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior, or by the Secretary of the Interior in states without approved programs.

*Human habitation* means a human residence or dwelling.

*Hydraulic shadow* means that area of land downstream from a dam that would be inundated by water upon failure of the dam during the regional flood.

*Increase in regional flood height* means a calculated upward rise in the regional flood elevation equal to or greater than 0.01 foot, based on a comparison of existing conditions and proposed conditions, which is directly attributable to development in the

floodplain, but not attributable to manipulation of mathematical variables, such as roughness factors, expansion and contraction coefficients and discharge.

*Land use* means any nonstructural use made of unimproved or improved real estate. (See *Development* .)

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term includes a mobile home but does not include a mobile recreational vehicle.

*Mobile recreational vehicle* means a vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

*Municipality* and *municipal* mean the city of Evansville.

*National Geodetic Vertical Datum (NVGD)* means elevations referenced to mean sea level datum, 1929 adjustment.

*New construction*, for floodplain purposes, means structures for which the start of construction commenced on or after the date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial flood insurance rate map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structure.

*Nonconforming structure* means an existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this chapter for the area of the floodplain which it occupies (e.g., an existing residential structure in the flood fringe district is a conforming use; however, if the first floor is lower than the flood protection elevation, the structure is nonconforming).

*Nonconforming use* means an existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this chapter for the area of the floodplain which it occupies, such as a residence in the floodway.

*Obstruction to flow* means any development which physically blocks the conveyance of floodwater such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.

*Official floodplain zoning map* means that map, adopted and made part of this chapter as described in section 54-7, which has been approved by the state department of natural resources and FEMA.

*Open space use* means those uses having relatively low flood damage potential and not involving structures.

*Ordinary high-water mark* means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark, such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic.

*Person* means an individual or group of individuals, corporation, partnership, association, municipality or state agency.

*Private sewage system* means a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the state department of commerce, including a substitute for the septic tank or soil absorption field, holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

*Public utilities* means those utilities using underground or overhead transmission lines, such as electric, telephone and telegraph systems, and distribution and collection systems, such as water, sanitary sewer and storm sewer systems.

*Reasonably safe from flooding* means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

*Regional flood* means a flood determined to be representative of large floods known to have generally occurred in the state. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the flood insurance rate map, the regional flood elevation is equivalent to the base flood elevation.

*Start of construction* means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start of construction on a site, such as the pouring of slab footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, which includes but is not limited to such objects as roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

*Subdivision* has the meaning given in Wis. Stats. S. 236.02(12).

*Substantial damage* means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.

*Unnecessary hardship* means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this chapter.

*Variance* means an authorization by the board of appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in this chapter.

*Violation* means the failure of a structure or other development to be fully compliant with the provisions of this chapter. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates, or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

*Water surface profile* means a graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

*Watershed* means the entire region or area contributing runoff or surface water to a particular watercourse or body of water.

*Well* means an excavation opening in the ground made by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater, regardless of its intended use.

(Code 1986, § 20.05)

### **Sec. 54-36. Areas regulated by article.**

Areas regulated by this article include all areas within the limits of the city that would be covered by the regional flood, including floodplain islands, where emergency rescue and relief routes would be inundated by the regional flood and hydraulic shadow of the dam.

(Code 1986, § 20.10)

### **Sec. 54-37. Official maps.**

(a) The boundary of the floodplain districts, including the hydraulic shadow, floodway, flood fringe and other floodplain districts, are those areas designated as floodplains or A zones on flood insurance rate map (FIRM) panels 55105C0012E, 55105C0014E, 55105C0016E, 55105C0017E, 55105C0018E, 55105C0019E; having an effective date of September 16, 2015, along with the corresponding flood insurance study (FIS) report.

(b) These maps are the official floodplain zoning maps and have been approved by the state department of natural resources and the Federal Emergency Management Agency (FEMA) and are on file in the office of the city clerk.

(Code 1986, § 20.11, Ordinance 2015-04)

### **Sec. 54-38. Floodplain districts established.**

The regional floodplain areas are hereby divided into three districts defined as follows:

- (1) *Floodway district (FW)*. The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwater.
- (2) *Flood fringe district (FF)*. That portion of the floodplain between the regional flood limits and the floodway.
- (3) *General floodplain district (GFP)*. All areas which have been or may be hereafter covered by floodwater during the regional flood. It includes both the floodway and flood fringe districts.

(Code 1986, § 20.12)

### **Sec. 54-39. Determination of location of district boundaries.**

Where an apparent discrepancy exists between the location of the outermost boundary of the flood fringe district or general floodplain district shown on the official floodplain zoning map and actual field conditions, the location shall be initially determined by the zoning administrator using the criteria in subsections (1) and (2) of this section. Where the zoning administrator finds that there is a significant difference between the map and the actual field conditions, the map shall be amended using the procedures established in section 54-52. Disputes between the zoning administrator and an applicant over the location of the district boundary line shall be settled according to section 54-74(d).

- (1) Where flood profiles exist, the location of the district boundary line shall be determined by the zoning administrator using both the scale appearing on the map and the elevations shown on the water surface profile of the regional flood. Where a discrepancy exists between the map and actual field conditions, the regional flood elevations shall govern. A map amendment is required where there is a significant discrepancy between the map and actual field conditions. The zoning administrator shall have the authority to grant or deny a land use permit on the basis of a district boundary derived from the elevations shown on the water surface profile of the regional flood, whether or not a map amendment is required. The zoning administrator shall be responsible for initiating any map amendments required under this section within a reasonable period of time.
- (2) Where flood profiles do not exist, the location of the district boundary line shall be determined by the zoning administrator using the scale appearing on the map, visual on-site inspection and any available information

provided by the department. Where there is a significant difference between the map and actual field conditions, the map shall be amended. Where a map amendment has been approved by both the city council and the department, the zoning administrator shall have the authority to grant or deny a land use permit.

(Code 1986, § 20.13)

#### **Sec. 54-40. Removal of lands from district.**

Compliance with the provisions of this article shall not be grounds for removing lands from the floodplain district, unless they are removed by filling to a height of at least two feet above the regional flood elevation, the fill is contiguous to land lying outside the floodplain district and the map is amended pursuant to section 54-52. To remove flood insurance requirements, FEMA must first revise the flood insurance rate map or issue a letter of map amendment or revision.

(Code 1986, § 20.14)

#### **Sec. 54-41. Compliance with applicable regulations.**

Any development or use within the areas regulated by this article shall be in full compliance with the terms of this article and other applicable local, state and federal regulations.

(Code 1986, § 20.15)

#### **Sec. 54-42. Applicability of article to governmental agencies.**

Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if Wis. Stats. § 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the state department of transportation are exempt when Wis. Stats. § 30.12(4) applies.

(Code 1986, § 20.16)

#### **Sec. 54-43. Effect of article on existing ordinances and property restrictions.**

(a) This article supersedes provisions of any city zoning ordinance enacted under Wis. Stats. §§ 62.23 and 87.30 which relates to floodplains, except that, where another city zoning ordinance is more restrictive than the provisions contained in this article, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(b) The article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements; however, where this article imposes greater restrictions, the provisions of this article shall prevail.

(Code 1986, § 20.17)

**Sec. 54-44. Interpretation of article.**

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the city council and shall not be deemed a limitation on or repeal of any other powers granted by the state statutes. Where a provision of this article is required by a standard in Wis. Admin. Code ch. NR 116, and where the provision of this article is unclear, the provision shall be interpreted in light of the Wis. Admin. Code ch. NR 116 standards in effect on the date of the adoption of the ordinance from which this article is derived or in effect on the date of the most recent text amendment to this article.

(Code 1986, § 20.18)

**Sec. 54-45. Warning and disclaimer of liability.**

The degree of flood protection provided by this article is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. Larger floods may occur or the flood height may be increased by manmade or natural causes, such as ice jams or bridge openings restricted by debris. Therefore, this article does not imply that areas outside of the delineated floodplain or permitted land uses within the floodplain will be totally free from flooding and associated flood damages, nor does this article create a liability on the part of or a cause of action against the city or any officer or employee thereof for any flood damage that may result from reliance on this article.

(Code 1986, § 20.19)

**Sec. 54-46. Annexed lands.**

The county floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the city for all areas annexed by the city until the city adopts and enforces an ordinance which meets the requirements of Wis. Admin. Code ch. NR 116. These annexed lands are described on the city's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the city zoning administrator.

(Code 1986, § 20.21)

**Sec. 54-47. Prohibited development.**

(a) No development, except as provided in subsection (b) of this section, shall be allowed in floodplain areas which will:

- (1) Cause an obstruction to flow, as any development which physically blocks the conveyance of floodwater by itself or in conjunction with future similar development, causing an increase in regional flood height; or

- (2) Cause an increase in regional flood height, due to floodplain storage area lost, which is equal to or exceeds 0.01 foot.

(b) Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this article or the official floodplain zoning maps, including floodway lines and water surface profiles, in accordance with section 54-52, and only if the total cumulative effect of the proposed development will not increase the height of the regional flood more than one foot for the affected hydraulic reach of the stream.

(c) The zoning administrator shall deny permits where it is determined the proposed development will cause an obstruction to flow or increase in regional flood height of 0.01 foot or greater.

(Code 1986, § 20.22)

#### **Sec. 54-48. Watercourse alterations.**

Prior to any alteration or relocation of a watercourse and prior to the issuance of any land use permit which may be required for the alteration or relocation of a watercourse, the zoning administrator shall notify in writing adjacent municipalities, the appropriate district office of the state department of natural resources and the appropriate office of FEMA and shall require the applicant to secure all necessary state and federal permits. The flood-carrying capacity within the altered or relocated portion of any watercourse shall be maintained.

(Code 1986, § 20.23)

#### **Sec. 54-49. Development requiring permit from state department of natural resources.**

Development which requires a permit from the state department of natural resources under Wis. Stats. chs. 30 and 31, such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed, provided the necessary local permits are obtained and necessary amendments to the official floodway lines, water surface profiles, floodplain zoning maps or this article are made according to section 54-52.

(Code 1986, § 20.24)

#### **Sec. 54-50. Submission of information regarding proposed development.**

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

- (1) Require the applicant to submit, at the time of application, two copies of an aerial photograph or a plan which accurately locates the proposed development with respect to the general floodplain district limits, channel of stream, and existing floodplain developments, together with all pertinent information, such as the nature of the proposal, legal description of the

property, fill limits and elevations, building floor elevations and floodproofing measures.

- (2) Require the applicant to furnish any of the following additional information as is deemed necessary by the department for evaluation of the effects of the proposal upon flood height and flood flows and the regional flood elevation and, where applicable, to determine the boundaries of the floodway:
  - a. A typical valley cross section showing the channel of the stream, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development and all historic high water information.
  - b. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply and sanitary facilities; soil types and other pertinent information.
  - c. Profile showing the slope of the bottom of the channel or flow line of the stream.
  - d. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage of materials, water supply and sanitary facilities.
- (3) Transmit one copy of the information described in subsections (1) and (2) of this section to the department district office along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of section 54-72(b)(3) apply, the applicant shall provide all required information and computations to delineate floodway boundaries and the effects of the project on flood elevations.

(Code 1986, § 20.38)

### **Sec. 54-51. Public information.**

(a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.

(b) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.

(c) All legal descriptions of property in the floodplain should include information relative to the floodplain zoning classification when such property is transferred.

(Code 1986, § 20.51)

### **Sec. 54-52. Amendments.**

(a) *Generally.* The city council may change or supplement the boundaries of the floodplain zoning districts and the regulations contained in this article in the manner provided by law. Actions which require an amendment include but are not limited to the following:

- (1) Any change to the official floodplain zoning map, including the floodway line or boundary of any floodplain area.
- (2) Correction of significant discrepancies between the water surface profiles and floodplain zoning maps.
- (3) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.
- (4) Any fill or encroachment into the floodplain that will obstruct flow causing an increase of 0.01 foot or more in regional flood height.
- (5) Any upgrading of the text of this article required by Wis. Admin. Code § NR 116.05, or otherwise required by law, or for changes by the city.

(b) *Procedure.*

- (1) Amendments to this article may be made upon petition of any interested party according to the provisions of Wis. Stats. § 62.23. Such petitions shall include all necessary data required by sections 54-50 and 54-72(b).
- (2) Copies of any amendment proposed shall be referred to the plan commission as described in section 54-73 for a public hearing and recommendation to the city council. Copies of the proposed amendment and notice of the public hearing shall be submitted to the appropriate district office of the state department of natural resources for review prior to the hearing. The amendment procedure shall comply with the provisions of Wis. Stats. § 62.23.
- (3) No amendment to the maps or text of this article shall become effective until reviewed and approved by the department.
- (4) All persons petitioning for a map amendment which involves an obstruction to flow causing an increase of 0.01 foot or more in the height of the regional flood shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the city council.
- (5) When considering amendments to the official floodplain zoning map in areas where no water surface profiles exist, the plan commission or board shall consider data submitted by the department, the zoning administrator's visual on-site inspections and other available information. (See section 54-39).

(Code 1986, § 20.52)

**Secs. 54-53--54-70. Reserved.**

## DIVISION 2. ADMINISTRATION AND ENFORCEMENT<sup>4</sup>

### **Sec. 54-71. Generally.**

This division provides for the appointment of appropriate boards and staff and the development of necessary policies and procedures to administer this article. Where a zoning administrator, planning agency or board of appeals has already been appointed to administer a zoning ordinance adopted under Wis. Stats. § 62.23(7), these officials shall also administer this article.

(Code 1986, § 20.45)

### **Sec. 54-72. Powers and duties of zoning administrator; issuance of permits and certificates of compliance.**

(a) *Powers and duties of zoning administrator.* The zoning administrator is hereby authorized to administer the provisions of this article and shall have the following duties and powers:

- (1) Advise applicants of the provisions of this article, assist them in preparing permit applications and appeals and ensure that the regional flood elevation for the proposed development is shown on all permit applications.
- (2) Issue permits and inspect properties for compliance with the provisions of this article and issue certificates of compliance, where appropriate.
- (3) Keep records of all official actions, such as:
  - a. All permits issued.
  - b. Inspections made.
  - c. Work approved.
  - d. Documentation of certified lowest floor and regional flood elevations for floodplain development.
  - e. Records of water surface profiles, floodplain zoning maps and ordinances, and nonconforming uses and structures, including changes, appeals, variances and amendments.
- (4) Submit copies of the following items to the department district office:
  - a. Within ten days of the decision, a copy of any decisions on variances, appeals for map or text interpretations and map or text amendments.
  - b. Copies of any case-by-case analyses and any other information required by the department, including an annual summary of the number and types of floodplain zoning actions taken.
- (5) Investigate, prepare reports on and report violations of this article to the appropriate city zoning agency and the city attorney for prosecution. Copies of the violation reports shall also be sent to the department district office.

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<sup>4</sup> **Cross references:** Administration, ch. 2.

- (6) Submit copies of text and map amendments and biennial reports to the regional office of FEMA.

(b) *Land use permits.* A land use permit shall be obtained from the zoning administrator before any new development, or any change in the use of an existing building or structure, including sewage disposal systems and water supply facilities, may be initiated. Application shall be made to the zoning administrator upon furnished application forms and shall include the following data:

- (1) *General information.* The following shall be included:
  - a. Name and address of the applicant, property owner and contractor/builder.
  - b. Legal description of the property, type of proposed use and an indication as to whether new construction or a modification to an existing structure is involved.
- (2) *Site development plan.* The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:
  - a. Location, dimensions, area and elevation of the lot.
  - b. Location of the ordinary high-water mark of any abutting navigable waterways.
  - c. Location of any structures, with distances measured from the lot lines and centerline of all abutting streets or highways.
  - d. Location of any existing or proposed on-site sewage systems or private water supply systems.
  - e. Location and elevation of existing or future access roads.
  - f. Location of floodplain and floodway limits on the property as determined from the official floodplain zoning maps.
  - g. The elevation of the lowest floor of proposed buildings and any fill using National Geodetic Vertical Datum (NGVD).
  - h. Data sufficient to determine the regional flood elevation at the location of the development and to determine whether or not the requirements of division 3 of this article or division 4 of this article are met.
  - i. Data sufficient to determine if the proposed development will cause either an obstruction to flow or an increase in regional flood height or discharge according to section 54-47. This may include any of the information noted in section 54-103(a).
- (3) *Data requirements to analyze developments.*
  - a. The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage for all subdivision proposals, as the term "subdivision" is defined in Wis. Stats. § 236.02, and other proposed developments exceeding five acres in area or where the estimated cost exceeds \$125,000.00. The applicant shall provide:

1. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity.
  2. A map showing location and details of vehicular access to lands outside the floodplain.
  3. A surface drainage plan with adequate details showing how flood damage will be minimized. The estimated cost of the proposal shall include all structural development, landscaping improvements, access and road development, electrical and plumbing and similar items reasonably applied to the overall development costs, but may not include land costs.
- b. The department will determine regional flood elevations and evaluate the proposal where the applicant is not required to provide computations as specified in subsection (b)(3)a of this section and inadequate data exists. The city may transmit additional information, such as the data specified in section 54-50(2), where appropriate, to the department with the request for analysis.
- (4) *Expiration.* All permits issued under the authority of this article shall expire one year from the date of issuance.
- (c) *Certificate of compliance.* No land shall be occupied or used and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:
- (1) The certificate of compliance shall show that the building, premises or part thereof and the proposed use conform to the provisions of this article.
  - (2) Application for such certificate shall be concurrent with the application for a permit.
  - (3) The certificate of compliance shall be issued within ten days after notification of completion of the work specified in the permit, providing the building, premises or proposed use conforms with all the provisions of this article.
  - (4) The applicant shall submit a certification, signed by a registered professional engineer or land surveyor, that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing adequacy meets the requirements of section 54-76.
- (d) *Other permits.* It is the responsibility of the applicant to secure all other necessary permits from all appropriate federal, state and local agencies, including those required by the U.S. Army Corps of Engineers under section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334.

(Code 1986, § 20.46)

### **Sec. 54-73. Powers and duties of plan commission.**

- (a) The plan commission shall:

- (1) Oversee the functions of the office of the zoning administrator.
  - (2) Review and make recommendations to the city council on all proposed amendments to this article, maps and text.
- (b) This plan commission shall not:
- (1) Grant variances to the terms of this article in place of action by the board of appeals.
  - (2) Amend the text or zoning maps in place of official action by the city council.

(Code 1986, § 20.47)

### **Sec. 54-74. Board of appeals.**

(a) *Generally.* The board of appeals created under Wis. Stats. § 62.23(7)(e) is hereby authorized or shall be appointed to act as the board of appeals for the purposes of this article. The board of appeals shall exercise the powers conferred by the state statutes and adopt rules for the conduct of business. The zoning administrator may not be the secretary of the board.

(b) *Powers and duties.* The board of appeals shall:

- (1) *Appeals.* Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this article.
- (2) *Boundary disputes.* Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
- (3) *Variances.* Hear and decide upon appeal variances from the dimensional standards of this article.

(c) *Appeals procedure.*

(1) *Filing.* Appeals to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 10 days as provided by the rules of the board by filing with the official whose decision is in question and with the board a notice of appeal, specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all papers constituting the record concerning the matter appealed.

(2) *Notice and hearing.* Notice and hearing for appeals, including variances, shall be as follows:

a. *Notice.* The board shall:

1. Fix a reasonable time for the hearing.
2. Publish adequate class 1 or 2 notice, pursuant to state statutes, specifying the date, time, place and subject of the hearing.
3. Ensure that notice shall be mailed to the parties in interest and the district office of the department at least ten days in advance of the hearing.

- b. *Hearing.* Any party may appear in person or by agent or attorney. The board shall:
    - 1. Resolve boundary disputes according to subsection (d) of this section.
    - 2. Decide variance applications according to subsection (e) of this section.
    - 3. Decide appeals of permit denials according to section 54-75.
- (3) *Decision.* The final decision regarding the appeal or variance application shall:
- a. Be made within 30 days of final hearing.
  - b. Be sent to the district office of the department within ten days of the decision.
  - c. Be a written determination signed by the chairperson or secretary of the board.
  - d. State the specific facts which are the basis for the board's decision.
  - e. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the application for a variance.
  - f. Include the reasons or justifications for granting an appeal, with a description of the hardship or practical difficulty demonstrated by the applicant, in the case of a variance, clearly stated in the recorded minutes of the board proceedings.

(d) *Boundary disputes.* The following procedure shall be used by the board of appeals in hearing disputes concerning the district boundaries shown on the official floodplain zoning map:

- (1) Where a floodplain district boundary is established by approximate or detailed floodplain studies, the regional flood elevations or profiles for the point in question shall be the governing factor in locating the district boundary. If no regional flood elevations or profiles are available to the board, other available evidence may be examined.
- (2) In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the board of appeals.
- (3) Where it is determined that the district boundary is incorrectly mapped, the board should inform the zoning committee or the person contesting the location of the boundary to petition the city council for a map amendment according to section 54-52.

(e) *Variances.*

- (1) The board of appeals may upon appeal grant a variance from the dimensional standards of this article where an applicant convincingly demonstrates that:
  - a. Literal enforcement of the provisions of this article will result in practical difficulty or unnecessary hardship on the applicant.
  - b. The hardship is due to adoption of this article and special conditions unique to the property not common to a group of adjacent lots or premises. In such case the ordinance or map must be amended.

- c. Such variance is not contrary to the public interest.
  - d. Such variance is consistent with the purpose of this article stated in section 54-34.
- (2) A variance shall not:
- a. Grant, extend or increase any use of property prohibited in the zoning district.
  - b. Be granted for a hardship based solely on an economic gain or loss.
  - c. Be granted for a hardship which is self-created.
  - d. Damage the rights or property values of other persons in the area.
  - e. Permit a lower degree of flood protection in the floodplain than the flood protection elevation.
  - f. Allow any floor, basement or crawlway below the regional flood elevation for residential or commercial structures.
  - g. Allow actions without the required amendment to this article or maps described in section 54-52(a).
- (3) When a variance is granted in a floodplain area, the board shall notify the applicant in writing that increased flood insurance premiums and risks to life and property may result. A copy of this notification shall be maintained with the variance appeal record.

(Code 1986, § 20.48)

### **Sec. 54-75. Review of denial of permits.**

(a) The plan commission (see section 54-73) or board of appeals shall review all data constituting the basis for the appeal of permit denial. This data may include, where appropriate:

- (1) Permit application data listed in section 54-72(b).
  - (2) Floodway/flood fringe determination data listed in section 54-50.
  - (3) Data listed in section 54-103(a)(2)b where the applicant has not submitted this information to the zoning administrator.
  - (4) Other data submitted to the zoning administrator with the permit application or submitted to the board with the appeal.
- (b) For appeals of all denied permits the board shall:
- (1) Follow the procedures of section 54-74.
  - (2) Consider plan commission recommendations.
  - (3) Either uphold the denial or grant the appeal.
- (c) For appeals concerning increases in regional flood elevation, the board shall:

- (1) Uphold the denial where the board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after the flood profile and map are amended and all appropriate legal arrangements are made with all adversely affected property owners.
- (2) Grant the appeal where the board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot, provided no other reasons for denial exist.

(Code 1986, § 20.49)

### **Sec. 54-76. Floodproofing requirements for issuance of permit or variance.**

(a) No permit or variance shall be issued until the applicant submits a plan or document certified by a registered professional engineer or architect that the floodproofing measures are adequately designed to protect the structure or development to the flood protection elevation.

- (b) Where floodproofing measures are required, they shall be designed to:
- (1) Withstand the flood pressures, depths, velocities, uplift and impact forces and other factors associated with the regional flood.
  - (2) Ensure protection to the flood protection elevation.
  - (3) Provide anchorage of structures to foundations to resist flotation and lateral movement.
  - (4) Ensure that the structural walls and floors are watertight to the flood protection elevation and the interior remains completely dry during flooding without human intervention.
- (c) Floodproofing measures could include:
- (1) Reinforcement of walls and floors to resist rupture or collapse caused by water pressure or floating debris.
  - (2) Addition of mass or weight to structures to prevent flotation.
  - (3) Placement of essential utilities above the flood protection elevation.
  - (4) Surface or subsurface drainage systems, including pumping facilities, to relieve external foundation wall and basement floor pressures.
  - (5) Construction of water supply wells and waste treatment systems to prevent the entrance of floodwater into the systems.
  - (6) Cutoff valves on sewer lines or elimination of gravity flow basement drains.

(Code 1986, § 20.50)

### **Sec. 54-77. Violations; penalties.**

Any violation of the provisions of this article by any person shall be unlawful and shall be referred to the city attorney, who shall expeditiously prosecute all such violators.

A violator shall, upon conviction, forfeit to the city a penalty of not less than \$10.00 and not more than \$50.00, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this article is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the city, state or any citizen thereof, pursuant to Wis. Stats. § 87.30.

(Code 1986, § 20.53)

**Secs. 54-78--54-100. Reserved.**

### **DIVISION 3. FLOODWAY DISTRICT**

#### **Sec. 54-101. Applicability of division.**

The provisions of this division apply to all areas mapped as floodway on the official floodplain zoning maps and to those portions of the general floodplain district determined to be floodway according to the procedures in section 54-50.

(Code 1986, § 20.25)

#### **Sec. 54-102. Permitted uses.**

The following open space uses are allowed in the floodway district and the floodway portion of the general floodplain district providing they are not prohibited by any other ordinance, they meet the standards in sections 54-103 and 54-104 and all permits or certificates have been issued according to section 54-72:

- (1) Agricultural uses, such as general farming, pasturing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
- (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
- (3) Private and public recreational uses, such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails according to section 54-103(d).
- (4) Uses or structures accessory to open space uses or essential for historical areas that are not in conflict with the provisions in sections 54-103 and 54-104.
- (5) Extraction of sand, gravel or other materials according to section 54-103(d).
- (6) Functionally water-dependent uses, such as docks, piers or wharves, including those used as part of a marina, and other water-related uses, such as dams, flowage areas, culverts, navigational aids and river crossings of transmission lines and pipelines, according to Wis. Stats. chs. 30 and 31.

- (7) Public utilities, streets and bridges according to section 54-103(c).  
(Code 1986, § 20.26)

**Sec. 54-103. Development standards.**

- (a) *General standards.*
- (1) Any development in floodway areas shall meet all of the provisions of sections 54-47--54-49 and have a low flood damage potential.
  - (2) Applicants shall provide the following data for the zoning administrator to determine the effects of the proposal according to section 54-47:
    - a. A cross section elevation view of the proposal, perpendicular to the watercourse, indicating whether the proposed development will obstruct flow; or
    - b. An analysis calculating the effects of this proposal on regional flood height.
  - (3) The zoning administrator shall deny the permit application where it is determined the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted under subsection (a)(2) of this section.
- (b) *Structures.* In or over floodway areas, only structures which are accessory to permanent open space uses, are essential for historical areas or are functionally dependent on a waterfront location may be allowed by permit, providing the structures meet all of the following criteria:
- (1) The structures are not designed for human habitation or associated with high flood damage potential.
  - (2) The structures are constructed and placed on the building site so as to cause an increase less than 0.01 foot in flood height and offer minimum obstruction to the flow of floodwater. Structures shall be constructed with the longitudinal axis parallel to the direction of flow of floodwater and approximately on the same line as those of adjoining structures.
  - (3) The structures are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river.
  - (4) The structures have all service facilities, such as electrical and heating equipment, at or above the flood protection elevation for the particular area.
- (c) *Utilities, streets and bridges.* Public utilities, streets and bridges may be allowed by permit, provided that:
- (1) Adequate floodproofing measures are provided to the flood protection elevation.
  - (2) Construction does not cause an increase in the regional flood height according to section 54-47, except where the water surface profiles, floodplain zoning maps and this article are amended as needed to reflect any changes resulting from such construction.

(d) *Fills or deposition of materials.* Fills or deposition of materials may be allowed by permit, provided that:

- (1) The requirements of section 54-47 are met.
- (2) The fill or deposition of materials does not encroach on the channel area between the ordinary high-water mark on each bank of the stream unless a permit has been granted by the state department of natural resources pursuant to Wis. Stats. ch. 30 and a permit pursuant to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334, has been issued, if applicable, and the other requirements of this section are met.
- (3) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion.
- (4) Such fills are not associated with private or public solid waste disposal.

(Code 1986, § 20.27)

### **Sec. 54-104. Prohibited uses.**

All uses not listed as permitted uses in section 54-102 are prohibited within the floodway district and in the floodway portion of the general floodplain district, including the following uses, which are always prohibited in the floodway:

- (1) Structures in, on or over floodway areas which are designed for human habitation associated with high flood damage potential or not associated with permanent open space uses.
- (2) The storage of any materials that are capable of floating, flammable, explosive or injurious to property, water quality or human, animal, plant, fish or other aquatic life.
- (3) Any uses which are not in harmony with or which may be detrimental to the uses permitted in the adjoining districts.
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and department-approved campgrounds that meet the applicable provisions of local ordinances and Wis. Admin. Code ch. COMM 83.
- (5) Any public or private wells which are used to obtain water for ultimate human consumption, except those for recreational areas that meet the requirements of local ordinances and Wis. Admin. Code chs. NR 811 and NR 812.
- (6) Any solid and hazardous waste disposal sites, whether public or private.
- (7) Any wastewater treatment ponds or facilities, except those permitted under Wis. Admin. Code § NR 110.15(3)(b).
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development outside the floodway which complies with the regulations for the floodplain area occupied.

(Code 1986, § 20.28)

**Secs. 54-105--54-130. Reserved.**

## **DIVISION 4. FLOOD FRINGE DISTRICT**

### **Sec. 54-131. Applicability of division.**

The provisions of this division apply to all areas within the flood fringe district as shown on the official floodplain zoning maps and to those portions of the general floodplain district that are determined to be in the flood fringe area pursuant to section 54-50.

(Code 1986, § 20.30)

### **Sec. 54-132. Permitted uses.**

Any structures, land use or development, including accessory structures and uses, are allowed within the flood fringe district and flood fringe portions of the general floodplain district, provided that the standards contained in section 54-133 are met, that the use is not prohibited by this article, any other ordinance or any other local, state or federal regulation and that all permits or certificates specified in section 54-72 have been issued.

(Code 1986, § 20.31)

### **Sec. 54-133. Development standards.**

All of the provisions of section 54-47 shall apply for purposes of this division, in addition to the following requirements according to the use requested:

- (1) *Residential uses.* Any structure or building used for human habitation which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall meet or exceed the following standards:
  - a. The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation, which is a point two feet above the regional flood elevation, on fill, except where subsection (1)b of this section is applicable. The fill elevation shall be one foot or more above the regional flood elevation, extending at least 15 feet beyond the limits of the structure. The department may authorize other floodproofing measures where existing streets or sewer lines are at elevations which make compliance impractical, provided the board of appeals grants a variance due to dimensional restrictions.
  - b. The basement or crawlway floor may be placed at the regional flood elevation, providing it is floodproofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.

- c. Contiguous dry land access, as defined in section 54-35 as a vehicle access route above regional flood elevation, shall be provided from a structure or building to land which is outside of the floodplain, except as provided in subsection (1)d of this section.
  - d. In existing developments where existing streets or sewer lines are at elevations which make compliance with subsection (1)c of this section impractical, the city may permit new development and substantial improvements where access roads are at or below the regional flood elevation, provided:
    - 1. The city has written assurance from the appropriate local units of police, fire and emergency services that rescue and relief will be provided to the structures by wheeled vehicles, considering the anticipated depth, duration and velocity of the regional flood event; or
    - 2. The city has an adequate natural disaster plan concurred with the division of emergency government and approved by the department.
- (2) *Accessory structures or uses.* An accessory structure or use not connected to a principal structure, including nonresidential agricultural structures, shall meet all the applicable provisions of section 54-103(a), (b) and (d) and section 54-104. A lesser degree of protection compatible with these criteria and the criteria in subsection (3) of this section may be permissible for an accessory structure or use, providing that the site is not inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood.
- (3) *Commercial uses.* Any commercial structure or building which is to be erected, constructed, altered or moved into the flood fringe area shall meet the requirements of subsection (1) of this section. Storage yards, parking lots and other accessory structures or land uses may be at lower elevations, subject to the requirements of subsection (5) of this section. However, no such area in general use by the public shall be inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood. Inundation of such yards or parking areas exceeding two feet may be allowed provided an adequate warning system exists to protect life and property.
- (4) *Manufacturing and industrial uses.* Any manufacturing or industrial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall be protected to the flood protection elevation utilizing fill, levies, floodwalls, adequate floodproofing measures in accordance with section 54-76 or any combination thereof. On streams or rivers having prolonged flood durations, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with the criteria in subsections (3) and (5) of this section, may be permissible for storage yards, parking lots and other accessory structures or uses.
- (5) *Storage of materials.* The storage of materials that are buoyant, flammable or explosive or which in times of flooding could be injurious to property, water quality or human, animal, plant, fish or aquatic life shall be at or above the flood protection elevation for the particular area or floodproofed

in compliance with section 54-76. Adequate measures shall be taken to ensure that such materials will not enter the river or stream during flooding.

- (6) *Public utilities, streets and bridges.* Public utilities, streets and bridges should be designed to be compatible with the local comprehensive floodplain development plans and:
  - a. When failure or interruption of public utilities, streets and bridges would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, construction of any substantial improvements to such facilities may only be permitted if they are floodproofed in compliance with section 54-76 to the flood protection elevation.
  - b. Minor or auxiliary roads or nonessential utilities may be constructed at lower elevations, providing they withstand flood forces to the regional flood elevation.
- (7) *Deposition of materials.* Any materials deposited for any purpose may only be allowed if all the provisions of this article are met.
- (8) *Mobile homes and manufactured homes.*
  - a. Owners or operators of all mobile manufactured home parks and subdivisions located in the regional floodplain shall provide for adequate surface drainage to minimize flood damage.
  - b. All new, replacement and substantially improved mobile manufactured homes to be placed or improved on a site located in the regional floodplain shall:
    - 1. Be elevated to the flood protection elevation.
    - 2. Meet the residential development standards for the flood fringe in subsection (1) of this section.
    - 3. Be anchored so they do not float, collapse or move laterally during a flood.

(Code 1986, § 20.32)

**Secs. 54-134--54-150. Reserved.**

## **DIVISION 5. GENERAL FLOODPLAIN DISTRICT**

### **Sec. 54-151. Applicability of division.**

The provisions for the general floodplain district shall apply to all floodplains for which regional flood data is not available or where regional flood data is available but floodways have not been delineated. As adequate regional flood data becomes available and floodways are delineated for portions of this district, such portions shall be designated as in the flood fringe district or floodway district, as appropriate.

(Code 1986, § 20.35)

### **Sec. 54-152. Permitted uses.**

The general floodplain district encompasses both floodway and flood fringe areas. Therefore, a determination shall be made pursuant to section 54-50 to determine whether the proposed use is located within a floodway or flood fringe area. Those uses permitted in floodways (see section 54-102) and flood fringe areas (see section 54-132) are allowed within the general floodplain district according to the standards of section 54-153 and provided that all permits or certificates required under section 54-72 have been issued.

(Code 1986, § 20.36)

### **Sec. 54-153. Development standards.**

Once it is determined according to section 54-50 that a proposed use is located within a floodway, the provisions of division 3 of this article shall apply. Once it is determined that the proposed use is located within the flood fringe, the provisions of division 4 of this article shall apply. All provisions of the remainder of this article apply to either district.

(Code 1986, § 20.37)

### **Secs. 54-154--54-170. Reserved.**

## **DIVISION 6. NONCONFORMING USES**

### **Sec. 54-171. Generally.**

(a) Insofar as the standards in this division are not inconsistent with the provisions of Wis. Stats. § 62.23(7)(h), they shall apply to all nonconforming uses and structures. These regulations apply to the modification of or addition to any structure and to the use of any structure or premises which was lawful before the passage of the ordinance from which this article is derived or any amendment thereto.

(b) The existing lawful use of a structure, building or its accessory use which is not in conformity with the provisions of this article may continue subject to the following conditions:

- (1) No modifications or additions to a nonconforming use or structure shall be permitted unless they are made in conformity with the provisions of this article for the area of the floodplain occupied. For purposes of this subsection, the terms "modification" and "addition" include but are not limited to any alteration,

addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered modifications or additions. These include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities.

- (2) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted, and any future use of the property and any structure or building thereon shall conform to the applicable requirements of this article.
- (3) As requests are received by the city for modifications or additions to nonconforming uses or structures, a record shall be kept which lists the nonconforming uses and structures, their present equalized assessed value and the cost of those additions or modifications which have been permitted.
- (4) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed 50 percent of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dry land access must be provided for residential and commercial uses in compliance with section 54-133(1) and section 54-133(3).
- (5) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practicably restored, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the requirements of this article. For the purpose of this subsection, restoration is deemed impractical where the total cost of such restoration would exceed 50 percent of the present equalized assessed value of the structure.

(Code 1986, § 20.40)

### **Sec. 54-172. Floodway areas.**

(a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:

- (1) Has been granted a permit or variance which meets the floodway requirements of this article.
- (2) Meets the requirements of section 54-171.
- (3) Will not increase the obstruction to flood flows or regional flood height.
- (4) Any addition to the existing structure shall be floodproofed, pursuant to section 54-76, by means other than the use of fill, to the flood protection elevation.

(b) No new on-site sewage disposal system or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all city ordinances and Wis. Admin. Code ch. COMM 83.

(c) No new well or modification to an existing well used to obtain water for ultimate human consumption shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all city ordinances and Wis. Admin. Code chs. NR 811 and 812.

(Code 1986, § 20.41)

### **Sec. 54-173. Flood fringe areas.**

(a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the city. In addition, the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in section 54-133, except where subsection (b) of this section is applicable.

(b) Where compliance with the provisions of subsection (a) of this section would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the board of appeals, using procedures established in section 54-74, may grant a variance from those provisions of subsection (a) of this section for modifications or additions which are protected to elevations lower than the flood protection elevation, provided:

- (1) No floor is allowed below the regional flood elevation for residential or commercial structures.
- (2) Human lives are not endangered.
- (3) Public facilities, such as water or sewer facilities, will not be installed.
- (4) Flood depths will not exceed two feet.
- (5) Flood velocities will not exceed two feet per second.
- (6) The structure will not be used for storage of materials described in section 54-133(5).

(c) If the provisions of neither subsection (a) nor subsection (b) of this section can be met, an addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the flood fringe on a one-time basis only if the addition:

- (1) Meets all other regulations and will be granted by permit or variance.

- (2) Does not exceed 60 square feet in area.
- (3) In combination with other previous modifications or additions to the building, does not exceed 50 percent of the present equalized assessed value of the building.

(d) All new private sewage disposal systems or additions to, replacement, repair or maintenance of private sewage disposal systems shall meet all the applicable provisions of all local ordinances and Wis. Admin. Code ch. COMM 83.

(e) All new wells or additions to, replacement, repair or maintenance of wells shall meet the applicable provisions of this article and Wis. Admin. Code chs. NR 811 and 812.

(Code 1986, § 20.42)