

**SUGGESTED SHORELAND OVERLAY
DISTRICT ORDINANCE for
MUNICIPALITIES**

**SHORELAND
MANAGEMENT**

**Supplementary
Report
No. 8**

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 **MINNESOTA
DEPARTMENT of NATURAL RESOURCES
Division of Waters
Land Use Management Section**

PREFACE

This report is to be used in conjunction with Shoreland Management Supplementary Report No. 6 "Procedural Guide for the Implementation of Municipal Shoreland Ordinances", and the information contained in that report should be carefully considered before adopting this ordinance. Since there are many approaches which a community may take in complying with the Shoreland Management Act, the community's needs, problems, and long-range planning objectives should be examined in detail before deciding which is most appropriate.

Many communities have had comprehensive zoning in effect for several years and will find the adoption of a separate shoreland management ordinance to be redundant and confusing. For these communities it may be more expedient to adopt a "Shoreland Overlay District" as part of their comprehensive zoning ordinance. This approach to municipal shoreland management assumes the community has:

- 1) An existing comprehensive zoning ordinance
- 2) A Municipal Planning Agency
- 3) A Zoning Administrator
- 4) A Board of Adjustment

To use this approach it is only necessary for the following sections to be incorporated into the existing comprehensive zoning ordinance in the appropriate places. Some sections of this model ordinance may already be in force in the community and those sections may be deleted. Consult with the DNR regional staff to determine how this model may be tailored to meet the needs of the community and comply with state requirements.

ORDINANCE FOR THE MANAGEMENT
OF SHORELAND AREAS OF THE
CITY OF _____

I. GENERAL PROVISIONS

A) Statutory Authorization: This ordinance is adopted pursuant to the authorization contained in the Laws of Minnesota 1973, Chapter 379, and in furtherance of the policies declared in Minnesota Statutes 1976, Chapters 105, 115, 116 and 462.

B) Policy: The uncontrolled use of shorelands of the city of _____ affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to the municipalities of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of waters and related land resources. This responsibility is hereby recognized by the City of _____.

C) Definitions: For the purpose of this ordinance, certain terms or words used herein shall be interpreted as follows: The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

"Boathouse" means a structure used solely for the storage of boats or boating equipment.

"Building Line" means that line measured across the width of the lot at the point where the principal structure is placed in accordance with setback provisions.

"Clear-cutting" means the removal of an entire stand of trees.

"Conditional Use" means a use of shorelands which is permitted within a zoning district only when allowed by the city after a public hearing, if certain conditions are met which eliminate or minimize the incompatibility of the conditional use with other permitted uses of the district.

"Governing Body" means the city council by whatever name known.

"Hardship" means the property in question cannot be put to reasonable use under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to his property, not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under terms of the official controls.

"Lot" means a parcel of land designated by metes and bounds description, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation thereof. For the purposes of these regulations, a lot shall be considered to be an individual building site which shall be occupied by no more than one principal structure equipped with sanitary facilities.

"Nonconforming Use" means any use of land established before the effective date of this ordinance which does not conform to the use restrictions of a particular zoning district. This should not be confused with substandard dimensions of a conforming use.

"Ordinary High Water Mark" means a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

"Planned Unit Development" means a type of development which may incorporate a variety of land uses planned and developed as a unit. The Planned Unit Development is distinguished from the traditional subdivision process of development in that zoning standards such as density, height limits, and minimum lot sizes may be altered by negotiation and agreement between the developer, the municipality and the Commissioner of Natural Resources.

"Cluster Development" is considered to be a type of Planned Unit Development and is subject to the same review criteria.

"Planning Agency" means the planning commission or planning department as created by the governing body.

"Protected Waters*" means any waters of the State as defined in Minnesota Statutes 1980, Section 105.37, Subdivision 14. However, no lake, pond or flowage of less than ten acres in size and no river or stream having a total drainage area less than two square miles shall be regulated for the purposes of these regulations.

"Setback" means the minimum horizontal distance between a structure or sanitary facility and the ordinary high water mark or between a structure or sanitary facility and a road, well, highway, or property lines.

* "Public Waters" has been changed to "Protected Water". All regulations and requirements remain the same, only the name has been changed.

"Shoreland" means land located within the following distances from protected waters: (i) 1,000 feet from the ordinary high water mark of a lake, pond, or flowage; and (ii) 300 feet from a river or stream, or the landward extent of a flood plain on such rivers or streams, whichever is greater. The practical limits of shorelands may be less than the statutory limits where such limits are designated by natural drainage divides at lesser distances, as shown on the official zoning map of the City.

"Structure" means any building (including mobile homes) or appurtenance thereto, except aerial or underground utility lines such as sewer, electric, telephone, telegraph or gas lines, including towers, poles, and other supporting appurtenances.

"Subdivision" means improved or unimproved land or lands which are divided for the purpose of ready sale or lease, or divided successively within a five year period for the purpose of sale or lease, into three or more lots or parcels of less than five acres each, contiguous in area and which are under common ownership or control.

"Substandard Use" means any use of shorelands existing prior to the date of enactment of this ordinance which is permitted within the applicable zoning district but does not meet the minimum lot area and length or water frontage, structure setbacks, or other dimensional standards of the ordinance.

"Variance" means any modification or variation of official controls where it is determined that, because of hardships, strict enforcement of the official controls is impractical.

II. DESIGNATION OF TYPES OF LAND USE

- A) Shoreland Management Classification: In order to guide the wise development and utilization of shorelands of protected waters for the preservation of water quality, natural characteristics, economic values and the general health, safety and welfare, certain protected waters in the City have been given a shoreland management classification.

These protected waters of the City have been classified by the Commissioner of Natural Resources as follows:

Natural Environment Lakes

DNR I.D. #

- 1.
2. (List here and on
3. Official Zoning Map)

Recreational Development Lakes

DNR I.D. #

- 1.
2. (List here and on
3. Official Zoning Map)

General Development Lakes

DNR I.D. #

- 1.
2. (List here and on
3. Official Zoning Map)

Natural Environment Streams

Legal Description

- 1.
2. (List here and on
3. Official Zoning Map)

Recreational Development Streams

Legal Description

- 1.
2. (List here and on
3. Official Zoning Map)

General Development Streams

Legal Description

- 1.
2. (List here and on
3. Official Zoning Map)

B) Shoreland Overlay District: The shorelands of the City of _____, are hereby designated as a Shoreland Overlay District. The purpose of the Shoreland Overlay District is to provide for the wise utilization of shoreland areas in order to preserve the quality and natural character of these protected waters of the City.

1. Permitted Uses.

All permitted uses allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the City.

2. Conditional Uses.

a) All conditional uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the City and as required by Section IV of this Ordinance.

b) Boathouses

3. Substandard Uses.

Any uses of shorelands in existence prior to the date of enactment of this ordinance which are permitted within the applicable zoning district, but do not meet the minimum lot area, setbacks or other dimensional requirements of this ordinance are substandard uses. Substandard uses, including substandard sanitary facilities, shall be allowed to continue. However, any structural alteration or addition to a substandard use which will increase the substandard dimensions shall not be allowed.

4. Prohibited Uses.

Any uses which are not Permitted or Conditional Uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the City.

III. ZONING PROVISIONS

A) The following standards shall apply to all shorelands of the protected waters listed in Section II of this Ordinance within the City. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth herein, then the more restrictive standards shall apply:

	<u>NATURAL ENVIRONMENT WATERS</u>	<u>RECREATIONAL DEVELOPMENT WATERS</u>	<u>GENERAL DEVELOPMENT WATERS</u>
1) <u>Unsewered Areas:</u>			
Lot Area (sq. ft.)	80,000	40,000	20,000
Water frontage and lot width at building line (ft)	200	150	100
Structure setback from Ordinary High Water Mark (ft)	200	100	75
Structure setback from roads and highways (ft)	-----50 Federal, State or County----- -----20 Municipal or Private-----		
Structure height limitation (ft)	-----35-----		
Maximum lot area covered by impervious surface (%)	30	30	30
Sewage system setback from Ordinary High Water Mark (ft)	150	75	50

2) Sewered Areas: All provisions for unsewered areas shall apply to sewered areas except for the following, which shall supersede the provisions applied to unsewered areas:

Lot Area (sq. ft.)			
waterfront lots	40,000	20,000	15,000
other lots	20,000	15,000	10,000
Water frontage and lot width at building line (ft)	125	75	75
Structure setback from Ordinary High Water Mark (ft)	150	75	50

B) Substandard Lots:

1. Lots or record in the office of the County Register of Deeds (or Registrar of Titles) prior to _____ (date of enactment of ordinance) which do not meet the requirements of Section III, (A) may be allowed as building sites provided:
 - (a) Such use is permitted in the zoning district.
 - (b) The lot is in separate ownership from abutting lands, and
 - (c) All other sanitary and dimensional requirements of this shoreland ordinance are complied with insofar as practical.
2. The minimum size and length of water frontage for substandard lots of record shall be:

(Municipality has option of setting minimum buildable size for substandard lots of record.)

C) Roads and Parking Areas:

Roads and parking areas shall be located to retard the runoff of surface waters and nutrients in accordance with the following criteria.

1. Where feasible and practical, all roads and parking areas shall meet the setback requirements established for structures in Section III (A) of this Ordinance.
2. In no instance shall these impervious surfaces be placed less than 50 feet from the ordinary high water mark.
3. Natural vegetation or other natural materials shall be used to screen parking areas when viewed from the water.

D) Elevation of Lowest Floor:

1. Structures shall be placed at an elevation consistent with the City's flood plain management controls.
2. In areas not regulated by flood plain management controls the elevation to which the lowest floor, including basements, shall be placed shall be determined as follows:
 - a) For lakes, ponds, and flowages by (a) an evaluation of available flood information and consistent with Statewide Standards and Criteria for Management of Flood Plain Areas of Minnesota or (b) placing the lowest floor at a level at least three feet above the highest known water level. In those instances where sufficient data on known high water levels are not available, the ordinary high water mark shall be used.
 - b) For rivers and streams, by an evaluation of available flood information and consistent with Statewide Standards and Criteria for Management of Flood Plain Areas of Minnesota.

E) Exceptions to Structure Setback Requirements

1. Setback requirements from the ordinary high water mark shall not apply to boathouses, piers, and docks. Location of piers and docks shall be controlled by applicable state and local regulations. Boathouses may be allowed as a conditional use provided they are not used for habitation and do not contain sanitary facilities.
2. On undeveloped shoreland lots that have two (2) adjacent lots with existing principal structures on both such adjacent lots, any new residential structure may be set back the average setback of the adjacent structures from the ordinary high water mark or fifty (50) feet, whichever is greater, provided all other provisions of the shoreland overlay district are complied with.

IV. SHORELAND ALTERATIONS

- A) The removal of natural vegetation shall be restricted to prevent erosion into protected waters, to consume nutrients in the soil, and to preserve shoreland aesthetics. Removal of natural vegetation in the shoreland overlay district shall be subject to the following provisions.
1. Selective removal of natural vegetation is allowed, provided that sufficient vegetative cover remains to screen cars, dwellings and other structures when viewed from the water.
 2. Clear cutting of natural vegetation is prohibited.
 3. Natural vegetation shall be restored insofar as feasible after any construction project is completed to retard surface runoff and soil erosion.
 4. The provisions of this section shall not apply to permitted uses which normally require the removal of natural vegetation.
- B) Grading and filling in shoreland areas or any alteration of the natural topography where the slope of the land is toward a protected water or a watercourse leading to a protected water must be authorized by a permit. The permit may be granted subject to the conditions that:
1. The smallest amount of bare ground is exposed for as short a time as feasible.
 2. Temporary ground cover, such as mulch, is used and permanent ground cover, such as sod, is established.
 3. Methods to prevent erosion and trap sediment are employed.
 4. Fill is stabilized to accepted engineering standards.

- C) Excavations on shorelands where the intended purpose is connection to a protected water shall require a permit from the Zoning Administrator before construction is begun. Such permit may be obtained only after the Commissioner of Natural Resources has issued a permit to work in the beds of protected waters.
- D) Any work which will change or diminish the course, current or cross-section of a protected water or wetland shall be approved by the Commissioner of Natural Resources, and such approval shall be construed to mean the issuance by the Commissioner of Natural Resources of a permit under the procedures of Minnesota Statutes, Section 105.42 and other related statutes.

V. SEWAGE TREATMENT

Any premises intended for human occupancy shall be provided with an adequate method of sewage treatment to be maintained in accordance with acceptable practices.

- A) Public or municipal collection and treatment facilities shall be used where available and where feasible.
- B) The standards of the Minnesota Pollution Control Agency (MPCA), "Individual Sewage Treatment Systems Standards and appendices", (6 MCAR § 4.8040) are hereby adopted by reference and make a part of this ordinance.
- C) Permit. No person, firm, or corporation shall install, alter, repair, or extend any individual sewage treatment system without first obtaining a permit therefor from the Zoning Administrator for the City.
 - 1. Application for permits shall be made in writing upon printed blanks or forms furnished by the Zoning Administrator and shall be signed by the applicant.
 - 2. Each application for a permit shall include: a correct legal description of the property on which the proposed installation, alteration, repair or extension is to take place; a plan of the site of reasonable scale and accuracy showing the location of any proposed or existing buildings, water supply, property lines, and underground or overhead utility lines; a complete plan of the sewage treatment system showing the location, size and design of all parts of the system to be installed, altered, repaired, or extended; the name of the person, firm, or corporation who is to install the system; any further information as required by the Zoning Administrator.
- D) Compliance. All individual sewage treatment systems within the shoreland overlay district shall be designed, installed, and maintained in accordance with the MPCA standards listed in Section V (B) of this ordinance.

- E) Inspection. Any installation, alteration, repair or extension of an individual sewage treatment system shall be inspected to ensure compliance by the Zoning Administrator or a qualified inspector following completion of the work but prior to covering of the system.

All existing sewage treatment systems inconsistent with the standards referenced in Section V (B) of this Ordinance shall be brought into conformance or discontinued within five (5) years from the date of enactment of this ordinance. Any nonconforming sanitary facility found to be a public nuisance shall be brought into conformity or discontinued within 30 days after receiving written notice from the Zoning Administrator.

VI. WATER SUPPLY

Public or private supplies of water for domestic purposes shall conform to Minnesota Department of Health standards for water quality.

- A) Public or municipal water supplies shall be used where available and where feasible.
- B) Permit. No person, firm, or corporation shall install, alter, repair or extend any private well without first obtaining a permit therefor from the Zoning Administrator for the City.
1. Application for permits shall be made in writing upon printed blanks or forms furnished by the Zoning Administrator and shall be signed by the applicant.
 2. Each application for a permit shall include: a correct legal description of the property on which the proposed installation, alteration, repair or extension is to take place; a plan of the site of reasonable scale and accuracy showing the location of any proposed or existing buildings, sewage treatment facilities, property lines; a complete plan of the water supply system showing the location, size and design of all parts of the system to be installed, altered, repaired, or extended; the name of the person, firm, or corporation who is to install the system; any further information as required by the Zoning Administrator.
- C) Private wells shall be located in a manner to be free from flooding and the top shall be so constructed and located as to be above all possible sources of pollution. Wells already existing in areas subject to flooding shall be flood-proofed.
- D) No private well shall be located closer than three (3) feet to the outside basement wall of a dwelling. The outside basement footing shall be continuous across the opening of the well alcove. No well shall be located closer than fifteen (15) feet to a property line.
- E) Private wells shall be located in accordance with the standards of the Minnesota Health Department standards MHD 217 "Location of Wells", (c)(1).

VII. SUBDIVISIONS

- A) No land shall be subdivided which is held unsuitable by the City for the proposed use because of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage treatment capabilities, or any other feature likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.
- B) Copies of all plats within the shoreland overlay district shall be submitted to the Commissioner of Natural Resources within ten (10) days of final approval by the City.
- C) Planned Unit Development (PUD). Altered zoning standards may be allowed as exceptions to this ordinance for PUD's provided preliminary plans are approved by the Commissioner of Natural Resources prior to their approval by the City, and further provided:
 - 1. Central sewage facilities shall be installed which meet applicable standards of the Minnesota Pollution Control Agency or the PUD is connected to a municipal sanitary sewer.
 - 2. Open space is preserved through the use of restrictive deed covenants, public dedications, or other methods.
 - 3. The following factors are carefully evaluated to ensure the increased density of development is consistent with the resource limitations of the protected water:
 - a) suitability of the site for the proposed use;
 - b) physical and aesthetic impact of increased density;
 - c) level of current development;
 - d) amount and ownership of undeveloped shoreland;
 - e) levels and types of water surface use and public accesses;
 - f) possible effects on over-all public use.
 - 4. Any commercial, recreational, community, or religious facility allowed as part of the planned unit development shall conform to all applicable federal and state regulations including, but not limited to the following:
 - a) licensing provisions or procedures;
 - b) waste disposal regulations;
 - c) water supply regulations;
 - d) building codes;
 - e) safety regulations;
 - f) regulations concerning the appropriation and use of Protected Waters as defined in Minnesota Statutes 1974, Chapter 105; and
 - g) applicable regulations of the Minnesota Environmental Quality Board.

5. The final plan for a planned unit development shall not be modified, amended, repealed, or otherwise altered unless approved in writing by the developer, the municipality, and the Commissioner.
6. There are centralized shoreline recreation facilities such as beaches, docks and boat launching facilities.

VIII. NOTIFICATION PROCEDURES

- A) A copy of the notice of a public hearing to consider a variance to the provisions of the Shoreland Overlay District or a conditional use in the Shoreland Overlay District shall be sent to the Commissioner of Natural Resources such that the notice is received by the Commissioner at least ten (10) days prior to such hearings.
- B) A copy of all amendments to this ordinance and final decisions granting variances or conditional uses within the Shoreland Overlay District shall be sent to the Commissioner of Natural Resources within ten (10) days of the amendment or final action.