

SIMPLIFIED MODEL FLOODPLAIN ORDINANCE

This model floodplain ordinance is simplified because it includes only one floodplain district, and accommodates a more limited range of development. This ordinance is intended for communities that have little or no existing structures within the floodplain and that meet the following criteria:

- Floodplains are largely undeveloped or protected as parks or open space; and/or
- Each developable parcel can accommodate for building sites outside of the floodplain.

As written, this ordinance prohibits new building within the floodplain, but reasonably accommodates for other common types of development (existing buildings can continue as nonconformities). This ordinance should be further customized based on the mapped flood risk, as well as the current and anticipated development. If there are not any existing nonconforming structures, crossings, or waterbodies, it can be simplified further yet. Local governments are encouraged to work with the DNR to tailor the language for the community.

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SECTION 1.0 STATUTORY AUTHORIZATION AND PURPOSE

- 1.1 **Statutory Authorization.** This floodplain ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F; Minnesota Rules, parts 6120.5000 – 6120.6200; the rules and regulations of the National Flood Insurance Program (NFIP) in 44 CFR § 59 to 80; and the planning and zoning enabling legislation in Minnesota Statutes, *[Chapter 394 (for counties) or Chapter 462 (for municipalities)]*.
- 1.2 **Purpose**
 - 1.21 This ordinance regulates development in the flood hazard areas of the *[community]*. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
 - 1.22 This ordinance is adopted in the public interest to promote sound land use practices, and floodplains are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.
 - 1.23 This ordinance is adopted to maintain eligibility in the National Flood Insurance Program.
 - 1.24 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.
- 1.3 **Abrogation and Greater Restrictions.** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or private agreements. The standards in this ordinance take precedence over any less restrictive, conflicting local laws, ordinances, or codes. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- 1.4 **Warning and Disclaimer of Liability.** This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. Not all flood risk is mapped. Larger floods do occur and the flood height may be increased by man-made or natural causes, such as ice jams or bridge openings restricted by debris. This ordinance does not create liability on the part of *[community]* or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- 1.5 **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

SECTION 2.0 DEFINITIONS

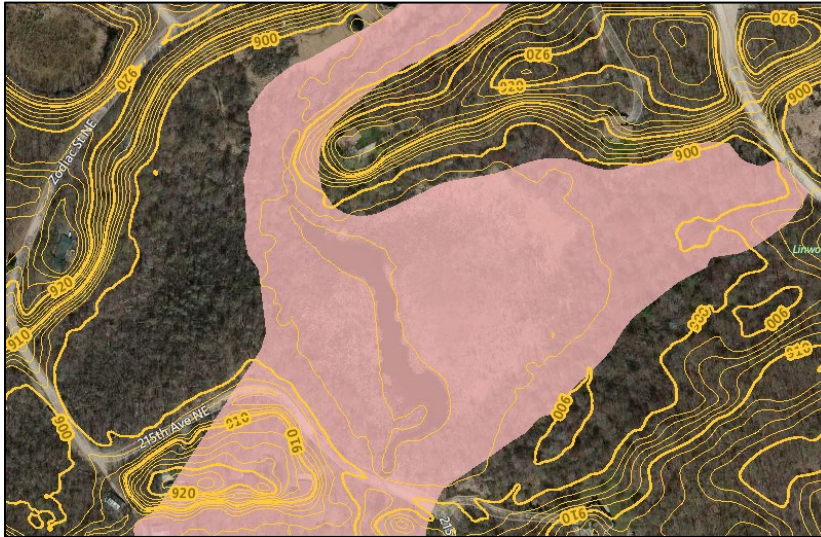
- 2.1 **Definitions.** Unless specifically defined, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.
 - 2.111 Base Flood. The flood having a one-percent chance of being equaled or exceeded in any given year. “Base flood” is synonymous with the term “regional flood” used in Minnesota Rules, part 6120.5000.
 - 2.112 Base Flood Elevation (BFE). The elevation of the base flood, regional flood, or one-percent annual chance flood. The term “base flood elevation” is used in the flood insurance study.
 - 2.113 Development. Any man-made change to improved or unimproved real estate including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of materials or equipment.
 - 2.114 Farm Fence. An open type of fence of posts and horizontally run wire, further specified in Minnesota Statutes, section 344.02 Subd. 1(a - d).
 - 2.115 Flood Fringe. The portion of the one-percent annual chance floodplain located outside of the floodway. This district also includes any additional area encompassed by the horizontal extension of the RFPE, as described in Section 3.13.

- 2.116 Flood Insurance Rate Map (FIRM). An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- 2.117 Floodplain. The beds, channel and the areas adjoining a wetland, lake or watercourse, or other source which have been or hereafter may be inundated by the base flood.
- 2.118 Floodway. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which must be reserved to carry or store the base flood discharge without cumulatively increasing the water surface elevation more than one-half foot.
- 2.119 Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
- 2.120 Recreational Vehicle. A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. Those vehicles not meeting this definition shall be considered a structure for the purposes of this ordinance. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term "travel trailer/travel vehicle."
- 2.121 Regulatory Flood Protection Elevation (RFPE). An elevation no lower than one foot above the elevation of the base flood plus any increases in water surface elevation caused by encroachments on the floodplain that result from designation of a floodway. These increases in water surface elevations are typically identified in the Floodway Data Tables, found in the Flood Insurance Study.
- 2.122 Structure. A roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Recreational vehicles not considered travel ready, as detailed in Section 4.40, shall also be considered a nonconforming structure for the purposes of this ordinance.
- 2.123 Substantial Damage. Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- 2.124 Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
 - A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - B. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" is defined in 44 CFR § 59.1.

SECTION 3.0 JURISDICTION AND DISTRICTS

- 3.1 **Lands to Which Ordinance Applies.** This ordinance applies to all lands under the jurisdiction of the **[community]** within the Floodplain, shown as Zones **[A or AE]** on the Flood Insurance Rate Map panels referenced in Section 3.2.
 - 3.11 The standards imposed in this overlay district are in addition to any other requirements. In case of a conflict, the more restrictive standards will apply.
 - 3.12 Where a conflict exists between the floodplain limits illustrated on the official floodplain maps and actual field conditions (as illustrated in Figure 1), the Base Flood Elevation (BFE) shall be the governing factor in locating the outer boundaries of the one-percent annual chance floodplain.

Figure 1: The mapped floodplain may not always align with on-the-ground contour elevations



3.13 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the **[city/county]** and to submit technical evidence.

3.2 **Incorporation of Maps by Reference.** The following maps together with all attached material are hereby adopted by reference and declared to be a part of the official zoning map and this ordinance. The attached material includes the Flood Insurance Study for ___ County, Minnesota, and Incorporated Areas, dated ___ and the Flood Insurance Rate map panels enumerated below, dated ___, all prepared by the Federal Emergency Management Agency. These materials are on file in the **[list location where maps will be filed – i.e., City Hall]**.

3.3 **Annexations:** The Flood Insurance Rate Map panels referenced in Section 3.2 may include floodplain areas that lie outside of the corporate boundaries of the **[community]** at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the **[community]** after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation. Annexations into panels not referenced in Section 3.2 require ordinance amendment in accordance with Section 8.0.

3.4 **Municipal Boundary Adjustments & Townships.** The Flood Insurance Rate Map panels referenced in Section 3.2 apply countywide. If at any point any lands come under the jurisdiction of another local government, the following shall apply:

3.41 City adjustments of corporate boundaries, including but not limited to annexations and detachments, shall shift floodplain administrative authority of all affected lands immediately upon the date of the boundary adjustment occurring. Cities retain jurisdiction for all incorporated lands, and the County retains jurisdiction under this ordinance on all unincorporated lands, except as provided under Section 3.42 below or through some form of administrative agreement.

3.42 Townships wishing to adopt official controls under Minnesota Statutes, Section 394.33 may only obtain zoning authority for floodplain controls when they have adopted an ordinance that is approved by the Department of Natural Resources and has formally enrolled in the NFIP. Until this occurs, the county shall retain jurisdiction under this ordinance on all unincorporated lands. In the event that a township returns zoning authority, the county shall resume that authority.

SECTION 4.0 PERMITTED ACTIVITIES AND STANDARDS IN THE FLOODPLAIN DISTRICT

4.1 **Permitted Activities.** A permit must be obtained from the Zoning Administrator to verify compliance with all applicable standards outlined in this ordinance prior to the following uses or activities:

4.11 Any addition, modification, rehabilitation, repair, or alteration to a nonconforming structure as specified in Section 5.0 of this ordinance. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in Section 2.0 of this ordinance.

4.12 Any use that requires fill, excavation, storage of materials, or placement of anything that may cause a potential obstruction, as well as any other form of development as defined in Section 2.0 of this ordinance.

- 4.2 **Activities Not Requiring a Permit.** Certain uses or activities may be exempt from obtaining a permit, such as planting a garden, farming, or other obviously insignificant activities such as putting up a mailbox or flagpole. Farm fences, as defined in Section 2.0 of this ordinance, are not considered to be an obstruction, and as such, do not require a permit. A local permit is not required if a public waters work permit has been obtained from the Department of Natural Resources, unless a significant area above the ordinary high water level is also to be disturbed. The continuation of existing uses, when the associated activities do not encroach further on the regulatory floodplain or trigger associated standards in this ordinance, do not require a permit.
- 4.3 **Minimum Development Standards.**
- 4.31 **All development must:**
- A. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - B. Be constructed with materials and equipment resistant to flood damage;
 - C. Be constructed by methods and practices that minimize flood damage;
 - D. Be reasonably safe from flooding and consistent with the need to minimize flood damage;
 - E. Be assured to provide adequate drainage to reduce exposure to flood hazards;
 - F. Not be detrimental to uses in adjoining areas; and
 - G. Not adversely affect the efficiency or restrict the flood carrying capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 4.32 **Buildings and Structures.** No new structures, such as buildings or accessory structures may be permitted in the regulatory floodplain. Modifications and alterations of nonconforming structures is subject to the standards in Section 5.0.
- 4.33 **Subdivisions.** All new lots must be able to accommodate for a building site with a natural grade outside of the floodplain. All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE).
- 4.34 **Encroachment Analysis.** Development in the following areas requires hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices (e.g. projects that restore the site to the previous cross-sectional area).
- A. In a floodway, development may not result in any of the following during the one-percent annual chance flood: cause a stage increase of 0.00 feet or greater, obstruct flood flows, or increase velocities.
 - B. In areas where a floodway has not been delineated, development may not allow stage increases more than one-half (0.5) foot at any point during the one-percent chance flood. This evaluation must include the cumulative effects of previous encroachments. A lesser water surface elevation increase than one-half (0.5) foot is required if, due to the water surface level increase, increased flood damages would potentially result.
- 4.35 **Fences** not meeting the definition of farm fences are not permitted.
- 4.36 **Transportation Facilities.** Railroad tracks, roads, and bridges must be elevated to the Regulatory Flood Protection Elevation (RFPE) where such facilities are essential to the orderly functioning of the area, or where failure or interruption would result in danger to public health or safety. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety. All public transportation facilities should be designed to minimize increases in flood elevations.
- 4.37 **Public Utilities.** All utilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be elevated and/or floodproofed to the Regulatory Flood Protection Elevation (RFPE), be located and constructed to minimize or eliminate flood damage, and be designed to eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. All public utilities should be designed to minimize increases in flood elevations. New solid waste management facilities, as defined in Minnesota Rules, part 7035.0300, are prohibited. Water supply systems are subject to the provisions in Minnesota Rules, part 4725.4350.

- 4.38 **Potential Pollutants.** Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life, as well as those likely to cause pollution of the waters, such as sewage; sand; rock; wrecked and discarded equipment; dredged spoil; municipal, agricultural or industrial waste; and other wastes as further defined in Minnesota Statutes, Section 115.01, are prohibited.
- 4.39 **Land Alterations.** In areas within 25 feet of the ordinary high water level, land alterations shall be restricted to:
- A. the minimum required to accommodate beach and access areas, not to exceed a volume greater than 10 cubic yards; and
 - B. the minimum required to accommodate for public utilities, roads, railroad tracks, bridges, and shoreline stabilization projects to correct an identified erosion problem, as verified by a qualified resource agency or the zoning administrator.
- 4.40 **Recreational vehicles** must be travel ready, meeting the following criteria:
- A. The vehicle must be fully licensed.
 - B. The vehicle must be ready for highway use, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities.
 - C. No permanent structural type additions may be attached to the vehicle.
- 4.41 **Private On-site Water Supply, Individual Sewage Treatment Systems, and other Service Facilities** shall be subject to applicable provisions detailed in Section 4.37. Replacement of on-site sewage treatment systems are to be constructed to avoid impairment to them or contamination from them during times of flooding, shall not be located in a designated floodway, and are subject to the provisions in Minnesota Rules, parts 7080.2270. No new private service facilities may be permitted in the regulatory floodplain

SECTION 5.0 NONCONFORMITIES

- 5.1 **Continuance of Nonconformities:** A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:
- 5.11 Within the floodway, or where the floodway has not been delineated, any expansion or enlargement of uses or structures is prohibited.
 - 5.12 Any addition, modification, rehabilitation, repair, or alteration shall be in conformance with the provisions of this ordinance, shall not increase the flood damage potential or increase the degree of obstruction to flood flows, and where applicable, must be protected to the Regulatory Flood Protection Elevation (RFPE).
 - 5.13 If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in Section 5.3, it may not be reconstructed except in conformity with the provisions of this ordinance.
 - 5.14 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.
- 5.2 **Standards for Modifications and Alterations of Nonconforming Structures.** In addition to the standards identified in 4.3, the following standards and procedures apply to additions, modifications, rehabilitations, repairs, alterations, or maintenance of nonconforming structures:
- 5.21 All structures, including manufactured homes, must be elevated on fill so that the lowest floor of the lowest enclosed area (including basement) is at or above the Regulatory Flood Protection Elevation (RFPE). The finished fill elevation shall be at or above the elevation associated with the base flood plus any stage increases that result from designation of a floodway. Fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Elevations must be certified by a registered professional engineer, land surveyor or other qualified person designated by the Zoning Administrator.
 - 5.22 Electrical, heating, ventilation, ductwork, plumbing, and air conditioning equipment and other service facilities are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 5.3 **Substantial Improvement and Substantial Damage Determinations.** Prior to issuing any permits for additions, modifications, rehabilitations, repairs, alterations, or maintenance to nonconforming structures, the Zoning

Administrator is required to determine if such work constitutes substantial improvement or repair of a substantially damaged structure. A determination must be made in accordance with the following procedures:

- 5.31 Estimate the market value of the structure. In the case of repairs, the market value of the structure shall be the market value before the damage occurred and before any restoration or repairs are made.
- 5.32 Estimate the cost of the project. The property owner shall accommodate for inspection, and furnish other documentation needed by the zoning administrator to evaluate costs.
 - A. Improvement costs shall be comprised of the market rate of all materials and labor, as well as the costs of all ordinary maintenance and upkeep carried out over the past one year.
 - B. Costs to repair damages shall be comprised of the market rate of all materials and labor required to restore a building to its pre-damaged condition regardless of the work proposed, as well as associated improvement costs if structure is being restored beyond its pre-damaged condition.
- 5.33 Compare the cost of the improvement, repairs, or combination thereof to the estimated market value of the structure, and determine whether the proposed work constitutes substantial improvement or repair of a substantially damaged structure, as defined in Section 2.0 of this ordinance.
- 5.34 Based on this determination, the zoning administrator shall prepare a determination letter and notify the property owner accordingly. Structures determined to be substantially damaged or substantially improved may not be reconstructed except in conformity with the provisions of this ordinance.

SECTION 6.0 ADMINISTRATION

6.1 **Duties.** A Zoning Administrator or other official must administer and enforce this ordinance.

6.11 Permit Application Requirements. Permit applications must be submitted to the Zoning Administrator. The permit application must include the following, as applicable:

- A. A site plan showing all existing or proposed buildings, structures, service facilities, potential obstructions, and pertinent design features having an influence on the permit.
- B. Location and detail of grading, fill, or storage of materials.
- C. Copies of any required local, state or federal permits or approvals.
- D. Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

6.12 Recordkeeping. The Zoning Administrator must maintain applicable records in perpetuity documenting:

- A. Encroachment analysis, as detailed in Section 4.34.
- B. Final elevations, as applicable, detailing the elevation to which structures and improvements to structures are constructed or floodproofed. Elevations shall be determined by an engineer, architect, surveyor or other qualified individual, as approved by the Zoning Administrator.
- C. Substantial damage and substantial improvement determinations, as detailed in Section 5.3, including the cost of improvements, repairs, and market value.
- D. All variance actions, including justification for their issuance, and must report such variances as requested by the Federal Emergency Management Agency.

6.2 Variances

6.21 An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with Minnesota Statutes, section [394.27, Subd. 7 (for counties) or 462.357, Subd. 6(2) (for municipalities)] and this ordinance.

6.22 Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

6.23 Variances from the provisions in this ordinance may only be issued by a community upon:

- A. A showing of good and sufficient cause,
- B. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and

C. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6.24 Variances from the provisions in this ordinance may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

6.25 Variances must be consistent with the general purpose of these standards and the intent of applicable provisions in state and federal law.

6.26 Though variances may be used to modify permissible methods of flood protection, no variance shall permit a lesser degree of flood protection than the Regulatory Flood Protection Elevation (RFPE).

6.27 The Zoning Administrator must notify the applicant for a variance that:

A. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and

B. Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.

6.3 **Notifications for Watercourse Alterations:** Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statute, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to FEMA.

6.4 **Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations:** Where physical changes affecting flooding conditions may increase or decrease the water surface elevation of the base flood, the **[community]** must notify FEMA of the changes in order to obtain a Letter of Map Revision (LOMR), by submitting a copy of the relevant technical or scientific data as soon as practicable, but no later than six months after the date such supporting information becomes available. Within areas where the floodway has not been delineated, a map revision is only required if development results in stage increases greater than 0.5 feet.

6.5 **Notifications to the Department of Natural Resources.**

6.51 All notices of public hearings to consider variances or conditional uses under this ordinance must be sent via electronic mail to the Department of Natural Resources respective area hydrologist at least ten (10) days before the hearings. Notices of hearings to consider subdivisions/plats must include copies of the subdivision/plat.

6.52 A copy of all decisions granting variances and conditional uses under this ordinance must be sent via electronic mail to the Department of Natural Resources respective area hydrologist within ten (10) days of final action.

SECTION 7.0 PENALTIES AND ENFORCEMENT

7.1 **Uses in Violation of the Ordinance.** Every structure, fill, deposit, or other use placed or maintained in the floodplain in violation of this ordinance shall be considered a public nuisance.

7.2 **Civil Remedies.** The creation of a public nuisance may be enjoined and the maintenance of a public nuisance under this ordinance may be abated by an action brought by the **[community]** or the Department of Natural Resources.

7.3 **Enforcement.** Violations of the provisions of this ordinance constitutes a misdemeanor and is punishable as defined by law. The Zoning Administrator may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance. The **[community]** must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

SECTION 8.0 AMENDMENTS

8.1 **Ordinance Amendments.** Any revisions to the floodplain maps by the Federal Emergency Management Agency or annexations of new map panels require an ordinance amendment to update the map references in Section 3.2 of this ordinance.

8.2 **Required Approval:** All amendments to this ordinance must be submitted to the Department of Natural Resources (DNR) for review and approval prior to adoption, for compliance with state and federal rules and requirements. The floodplain ordinance shall not be considered valid until approved

EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its passage and approval.

Adopted by the **[community]** Board/City Council

This ____ of _____, _____

(Day) (Month) (Year)

Attest: _____, County Board Chairperson/Mayor

(Name of Elected Official)

Attest: _____, County Administrator/City Clerk