



ORDINANCE NUMBER _____

RESTRICTIVE FLOODPLAIN MANAGEMENT ORDINANCE

This sample ordinance is simple to administer, since it includes only one floodplain district with a limited range of uses. This sample ordinance is intended for communities that have limited existing and potential development within the floodplain and that meet the following criteria:

- 1) *Floodplains are largely undeveloped or protected as parks or open space (small numbers of existing buildings can continue as nonconformities);*
- 2) *Floodplains should not have areas planned or zoned for development (e.g., subdivided parcels, access roads and utilities, etc.); and*
- 3) *There should be building sites outside of the floodplain on each parcel of developable land along the lake/wetland, stream or river.*

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SECTION 1.0 STATUTORY AUTHORIZATION AND PURPOSE:

- 1.1 **Statutory Authorization:** The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.
- 1.2 **Purpose:**
 - 1.21 This ordinance regulates development in the flood hazard areas of the City of _____. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
 - 1.22 **National Flood Insurance Program Compliance.** This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 to 78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.
 - 1.23 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

SECTION 2.0 GENERAL PROVISIONS:

- 2.1 **Lands to Which Ordinance Applies:** This ordinance applies to all lands within the jurisdiction of the City of _____ shown on the Flood Insurance Rate Maps adopted in Section 2.2 as being located within the boundaries of the Floodplain District. The Floodplain District is an overlay district that is superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.
- 2.2 **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 _____ and _____, 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., Town Hall).
- 2.3 **Interpretation:** The boundaries of the Floodplain District are determined by scaling distances on the Flood Insurance Rate Map.
 - 2.31 Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations must be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.
 - 2.32 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the (*Planning Commission / Board of Adjustment*) and to submit technical evidence.

2.4 **Abrogation and Greater Restrictions:** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

2.5 **Warning and Disclaimer of Liability:** This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of _____ or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

2.6 **Severability:** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

2.7 **Definitions:** Unless specifically defined below, words or phrases used in this ordinance must be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

2.711 Base Flood – the flood having a one percent chance of being equaled or exceeded in any given year.

2.712 Base Flood Elevation – The elevation of the “regional flood,” as defined. The term “base flood elevation” is used in the flood insurance survey.

2.713 Development – any man-made change to improved or unimproved real estate including, but not limited to, buildings, manufactured homes, and other structures, recreational vehicles, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of materials or equipment.

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

2.715 Flood Fringe – the portion of the floodplain located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study, _____ County, Minnesota and Incorporated Areas.

2.716 Flood Insurance Rate Map - 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).

2.717 Floodplain – the areas adjoining a watercourse which have been or hereafter may be covered by the regional flood.

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

2.719 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."

2.720 **Obstruction** – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence (with the exception of farm fences), stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

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

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

2.723 **Regulatory Flood Protection Elevation** – an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

2.724 **Structure** – anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, and other similar items.

2.725 **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.

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

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

2.8. **Annexations:** The Flood Insurance Rate Map panels adopted by reference into Section 2.2 above may include floodplain areas that lie outside of the corporate boundaries of the City of _____ at

the time of adoption of this ordinance. If any of these floodplain areas are annexed into the City after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

SECTION 3.0 ESTABLISHMENT OF FLOODPLAIN DISTRICT

- 3.1 **Areas Included:** The Floodplain District for the City of _____ includes those areas designated as (list zones) on the Flood Insurance Rate Maps adopted in Section 2.2. The Floodplain District is an overlay district to all existing land use districts. The requirements of this ordinance apply in addition to other legally established regulations of the community. Where this ordinance imposes greater restrictions, the provisions of this ordinance apply.
- 3.2 **Compliance:** No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations. Within the Floodplain District, all activities not listed in Section 4.0 are prohibited.

SECTION 4.0 PERMITTED ACTIVITIES AND STANDARDS IN THE FLOODPLAIN DISTRICT:

- 4.1 Permitted Activities. A permit must be obtained from the Zoning Administrator prior to conducting the following activities:
 - (a) Expansion, change, enlargement, or alteration of a nonconforming use as specified in Section 6 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 2.7 of this ordinance.
 - (b) Any use that requires fill, obstruction, excavation, storage of materials, or any other form of development as defined in Section 2.7 of this ordinance.
- 4.2 Activities Not Requiring a Permit. The following activities are allowed within the Floodplain District without a permit provided that they comply with all underlying zoning districts and are not prohibited by any other ordinance; and provided that they do not require structures, fill, obstructions, excavations, drilling operations, storage of materials or equipment or any other form of development as defined in Section 2.7 of this ordinance. If the activity does require any other form of development, a permit and compliance with Section 4.3 of this ordinance is required.
 - 4.21 Agricultural uses such as general farming, pasture, grazing, forestry, sod farming, and wild crop harvesting. Farm fences that do not obstruct flood flows are permitted.
 - 4.22 Outdoor plant nurseries and horticulture.
 - 4.23 Private and public recreational uses such as golf courses, tennis courts, driving ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
 - 4.24 Lawns, gardens, parking areas, and play areas.
 - 4.25 Railroads, roads, bridges, utility transmission lines, pipelines and other public utilities, or other projects impacting a public water, provided that the applicant has secured a public waters work permit or utility crossing license from the Department of Natural Resources.
- 4.3 Standards for Permitted Activities:

- 4.31 All construction and activities must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 4.32 Construction must utilize materials that are resistant to flood damage.
- 4.33 Activities must utilize methods and practices that minimize flood damages.
- 4.34 The activity must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.
- 4.35 Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 4.36 Public utilities, roads, railroad tracks and bridges to be located within the floodplain must be designed in accordance with Sections 4.34 and 4.35 above, or must obtain a Conditional Letter of Map Revision meeting the requirements of 44 CFR 60.3(d).
 - (a) When failure or interruption of these public facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, such facilities must be elevated to the regulatory flood protection elevation.
 - (b) Where failure or interruption of service would not endanger public health or safety, railroads, utilities, and minor or auxiliary roads may be constructed at a lower elevation.
- 4.37 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, and accessory structures as permitted, 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.

4.38 New or replacement water supply systems and sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

SECTION 5.0 ADMINISTRATION

- 5.1 **Zoning Administrator:** A Zoning Administrator or other official designated by the (Governing Body – i.e., City Council, County Board) must administer and enforce this ordinance.
- 5.2 **Development Approvals:** Any construction, enlargement, alteration, repair, improvement, moving or demolition of any building or structure must comply with the requirements of this ordinance. No mining, dredging, filling, grading, paving, excavation, obstruction, drilling operation or other form of development as defined in Section 2.7 of this ordinance are allowed, other than those associated with the activities identified in Sections 4 and 6.
- 5.31 Permit applications must be submitted to the Zoning Administrator on forms provided for that purpose and shall include the following where applicable: plans drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

5.32 Prior to granting a permit, the Zoning Administrator must verify that the applicant has obtained all necessary state and federal permits.

5.4 Variances:

5.41 An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and *(list any standards in the existing Zoning Ordinance)*.

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

5.43 The following additional variance criteria of the Federal Emergency Management Agency must be met:

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

5.44 The *(designated body/community official)* must submit hearing notices for proposed variances to the Department of Natural Resources sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

5.45 A copy of all decisions granting variances must be forwarded to the Commissioner of the Department of Natural Resources within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

5.46 The Zoning Administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the base or regional flood level increases risks to life and property

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

5.5 **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, Chapter 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

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

SECTION 6.0 NONCONFORMITIES

6.1 **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.

6.11 A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its nonconformity. There shall be no expansion to the outside dimensions of any portion of a nonconforming structure located within the Floodplain District. Any expansion or enlargement of uses, structures, or occupancies within the Floodway District is prohibited.

6.12 If any structure experiences a substantial improvement as defined in this ordinance, then the entire structure must meet the standards of Section 6.2 of this ordinance for new structures. If the current proposal, including maintenance and repair during the previous 365 days, plus the costs of any previous alterations and additions since the first Flood Insurance Rate Map (or add date of first FIRM) exceeds 50 percent of the market value of any nonconforming structure, the entire structure must meet the standards of Section 6.2 of this ordinance.

6.13 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.

6.14 If any nonconformity is substantially damaged, as defined in Section 2.7 of this ordinance, it may not be reconstructed unless it is located in the flood fringe portion of the floodplain and it is reconstructed in accordance with the standards of Section 6.2 of this ordinance

6.15 Any substantial improvement, as defined in Section 2.7 of this ordinance, to a nonconforming structure, then the existing nonconforming structure must be located in the flood fringe portion of the floodplain and meet the requirements of Section 6.2 of this ordinance.

6.2 **Standards for Reconstruction of Nonconforming Structures.** In addition to the standards identified in 4.3, the following standards and procedures apply to nonconforming structures and associated activities in the flood fringe portion of the floodplain, as allowed under Section 6.1.

6.21 All structures, including manufactured homes, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure.

6.22 Fill must be properly compacted and the slopes must be properly protected by the use of mulches or similar materials for temporary bare soil coverage, with permanent vegetation cover established as soon as possible, or other acceptable method.

6.23 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.

- 6.24 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
- 6.25 Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.
- 6.26 Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.

SECTION 7.0 PENALTIES AND ENFORCEMENT

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

SECTION 8.0 AMENDMENTS

- 8.1 **Floodplain Designation – Restrictions on Removal:** The floodplain designation on the Official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

8.2 **Amendments Require DNR and FEMA Approval:** All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner of the DNR must approve the amendment prior to community approval.

8.3 **Map Amendments Require Ordinance Amendments.** The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.2 of this ordinance.

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

Adopted by the _____ City Council

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

Attest: _____, Mayor
(Name of Elected Official)

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

Stamp With Community Seal: