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Sponsors: THE CHAIR

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Attachments: 1. City Plan Commission Letter.pdf, 2. Zoning Code Technical Committee Letter, 3. Zoning Code Technical Committee Minutes, 4. Notice List, 5. Notice Published on 10-6-08 and 10-13-08, 6. Notice Published on 11-14-08

Date	Ver.	Action By	Action	Result	Tally
9/16/2008	0	COMMON COUNCIL	ASSIGNED TO		
9/19/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	REFERRED TO		
9/19/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	REFERRED TO		
9/30/2008	1	CITY CLERK	DRAFT SUBMITTED		
10/6/2008	1	CITY CLERK	PUBLISHED		
10/13/2008	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/16/2008	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/21/2008	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
10/29/2008	1	COMMON COUNCIL	PASSED	Pass	11:1
11/5/2008	1	MAYOR	SIGNED		
11/14/2008	1	CITY CLERK	PUBLISHED		

080676
SUBSTITUTE 1

THE CHAIR

A substitute ordinance relating to floodplain zoning regulations.

295-201-205 am

295-201-316 cr

295-201-316.5 cr

295-307-3-c am

295-415-9-a-5 am

295-415-9-a-6 am

295-415-9-c-3-c am

295-1011-7-a rc

295-1011-7-c rc
295-1011-7-e rc
295-1011-7-f am
295-1011-9-a-8 cr
295-1011-9-b-4 cr
295-1011-9-f-9 cr
295-1011-10-a am
295-1011-10-b-1 am
295-1011-10-b-5 cr
295-1011-10-d am
295-1011-10-e am
295-1011-10-n cr
295-1011-10-o cr
295-1011-11-b-2 am
295-1011-11-b-3 am
295-1011-11-b-4 rn
295-1011-11-b-4 cr
295-1011-15-e-1 rn
295-1011-15-e-1 cr
295-1011-15-e-2 rn
295-1011-15-e-3 rn
295-1011-15-e-4 rn

This ordinance makes various revisions to the City's zoning regulations for floodplains to reflect the most current version of the "Model Floodplain Ordinance" prepared by the Wisconsin Department of Natural Resources as well as other changes suggested or requested by the Department of Natural Resources and the Southeastern Wisconsin Regional Planning Commission.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 295-201-205 of the code is amended to read:

295-201. Definitions.

205. 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 >>,as further described in s. 295-1011-14<< .

Part 2. Section 295-201-316 and 316.5 of the code is created to read:

316. LETTER OF MAP AMENDMENT means an official notification from the federal emergency management agency stating that a flood hazard boundary map or a flood insurance rate map has been amended.

316.5. LETTER OF MAP REVISION BASED ON FILL means an official notification from the federal emergency management agency indicating that a structure or parcel has been elevated on fill to an elevation at or above the regional flood elevation and is, therefore, excluded from being located in the floodplain as initially denoted on the city's flood hazard boundary map or flood insurance rate map.

Part 3. Section 295-307-3-c of the code is amended to read:

295-307. Amendments to the Zoning Text or Map.

3. PROCEDURE FOR MAP AMENDMENT.

c. Staff Actions. The department shall establish a time and date for a public hearing, notify affected property owners at least 10 days in advance of the hearing and prepare a staff report on the map amendment. >>In the case of any map amendment relating to a floodplain overlay zone, the department shall also submit the amendment and the notice of public hearing to the Wisconsin department of natural resources.<<

Part 4. Section 295-415-9-a-5 and 6 of the code is amended to read:

295-415. Nonconformities.

9. FLOODPLAIN OVERLAY ZONES.

a. General.

a-5. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would >>equal or<< exceed 50% 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 subsection. Contiguous dryland access must be provided for residential and commercial uses in compliance with s. 295-1011-10-b. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph.

a-6. Except as provided in subd. a-7, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current code requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition >>equals or<< exceeds 50% of the structure's present equalized assessed value.

Part 5. Section 295-415-9-c-3-c of the code is amended to read:

c. Flood Fringe Overlay Zone.

c-3-c. In combination with other previous modifications or additions to the building, the addition does not >>equal or<< exceed 50% of the present equalized assessed value of the building.

Part 6. Section 295-1011-7-a, c and e of the code is repealed and recreated to read:

295-1011. Floodplain Overlay Zones (FM, FF, FSD).

7. PROCEDURES.

a. Creation or Revision. Creation of, or revisions to, floodplain overlay zone boundaries or regulations shall be by amendment to the zoning map or zoning code text, pursuant to s. 295-307. Such an amendment shall not be final until approved by both the Wisconsin department of natural resources and the federal emergency management agency. In the case of a floodplain overlay zone boundary change, the federal emergency management agency will determine if an official letter of

map amendment or a letter of map amendment based on fill will be required. These letters are waivers of federal insurance requirements and do not fulfill minimum requirements for removing land from the floodplain. To remove land from a floodplain, the requirements of sub. 17 shall be met.

c. Other Approvals. c-1. No amendment shall become effective until it is reviewed and approved by the Wisconsin department of natural resources.

c-2. Any person petitioning for a map amendment that obstructs flow, by increasing regional flood height 0.01 foot or more, 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 common council.

e. Official Maps and Revisions. e-1. Official Maps Adopted. The boundaries of all floodplain overlay zones are designated as floodplains or A-Zones on the following maps and the revisions in the city of Milwaukee floodplain appendix:

e-1-a. Milwaukee County flood insurance study, dated September 26, 2008, volume numbers 55079CV001A, 55079CV002A, 55079CV003A, 55079CV004A and 55079CV005A.

e-1-b. Milwaukee County flood insurance rate map panel numbers 55079CIND0A, 55079C0008E, 55079C0012E, 55079C0014E, 55079C0016E, 55079C0017E, 55079C0018E, 55079C0019E, 55079C0036E, 55079C0037E, 55079C0038E, 55079C0052E, 55079C0056E, 55079C0058E, 55079C0066E, 55079C0067E, 55079C0068E, 55079C0069E, 55079C0076E, 55079C0077E, 55079C0081E, 55079C0082E, 55079C0084E, 55079C0086E, 55079C0087E, 55079C0089E, 55079C0091E, 55079C 0092E, 55079C0093E, 55079C0094E, 55079C0103E, 55079C0111E, 55079C0131E, 55079C0132E, 55079C0151E, 55079C0152E, 55079C0153E, 55079C0154E, 55079C0156E, 55079C0157E, 55079C0158E, 55079C0159E, 55079C0162E, 55079C0166E, 55079C0167E and 55079C0176E dated September 26, 2008, with corresponding profiles that are based on the flood insurance study.

e-1-c. Waukesha County flood insurance rate map panel numbers 55133C0114F and 55133C0227F dated November 19, 2008, with corresponding profiles that are based on the flood insurance study.

e-2. Revision of Maps. Any change to the base flood elevations in the flood insurance study or on the flood insurance rate map shall be reviewed and approved by the Wisconsin department of natural resources and the federal emergency management agency before it is effective. No changes to regional flood elevations on non-federal emergency management agency maps shall be effective until approved by the department of natural resources.

e-3. Location of Maps. The maps listed in subd. 1 are on file in the office of the commissioner.

e-4. More Than One Map or Revision. Whenever more than one map or revision is referenced, the most restrictive information shall apply.

Part 7. Section 295-1011-7-f of the code is amended to read:

f. Variances. Pursuant to ~~[[s. 295-311-4-f-2-a]]~~ >>s. 295-311-4-f-3-a<<, the board of zoning appeals shall take no action on any application for a variance in a floodplain overlay zone for 30 days following the date of receipt of the application or until the Wisconsin department of natural resources has made its recommendation, whichever is sooner.

Part 8. Section 295-1011-9-a-8 of the code is created to read:

9. STANDARDS FOR DEVELOPMENT IN THE FLOODWAY OVERLAY ZONE.

a. Permitted Uses.

a-8. Normal earth-grading activities to permit utilization of the lands for open space, outdoor recreation, yard, parking and similar uses, provided the applicant can demonstrate that the water-carrying and storage capacity of the floodplain will not decrease as a result of the earth-grading activities.

Part 9. Section 295-1011-9-b-4 of the code is created to read:

b. General Development Standards.

b-4. Parking and loading areas may be at elevations lower than the flood protection elevation. However, no such areas in general use by the public may be inundated to a depth greater than 2 feet or subject to flood velocities greater than 2 feet per second. Such areas may be located at lower elevations if an adequate warning system exists to protect life and property.

Part 10. Section 295-1011-9-f-9 of the code is created to read:

f. Prohibited Uses.

f-9. Parking areas for new or used motor vehicle sales or storage.

Part 11. Section 295-1011-10-a of the code is amended to read:

10. STANDARDS FOR DEVELOPMENT IN THE FLOOD FRINGE OVERLAY ZONE.

a. Permitted Uses. Any structure, land use or development is permitted in the flood fringe overlay zone if it meets the standards of sub. 8 and pars. b to ~~[[m]]~~ >>2 feet<<, is not prohibited elsewhere in this section or this code, and all permits or certificates specified in subs. 12 and 13 have been issued.

Part 12. Section 295-1011-10-b-1 of the code is amended to read:

b. Residential Use Regulations.

b-1. The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation on fill. The fill shall be ~~[[one foot]]~~ >>2 feet<< or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Wisconsin department of natural resources may authorize other floodproofing measures if the elevations of existing streets or sewer lines make compliance impractical and the board grants a variance.

Part 13. Section 295-1011-10-b-5 of the code is created to read:

b-5. The floodplain overlay zone boundary shall be amended pursuant to sub. 7-b to provide for removal of the land on which the habitable structure is located in accordance with sub. 17.

Part 14. Section 295-1011-10-d and e of the code is amended to read:

d. Commercial >>and Institutional<< Uses. Any commercial >>or institutional<< structure which is erected, altered or moved into a flood fringe overlay zone shall meet the requirements of par. b. Subject to the requirements of [[par. g]] >>pars. f and o<<, storage yards, surface parking lots and similar uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

e. Manufacturing and Industrial Uses. Any manufacturing or industrial structure which is erected, altered or moved into a flood fringe overlay zone shall be protected to the flood protection elevation using fill, levees, floodwalls or other floodproofing measures in sub. 14. Subject to the requirements of [[par. g]] >>pars. f and o<<, storage yards, surface parking lots and similar uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

Part 15. Section 295-1011-10-n and o of the code is created to read:

n. Grading Activities. Normal earth-grading activities to permit utilization of the lands for open space, outdoor recreation, yards, parking and similar uses shall be permitted in the flood fringe overlay zone, provided the applicant can demonstrate that the water-carrying and storage capacity of the floodplain will not decrease as a result of the earth-grading activities.

o. Parking and Loading Areas. o-1. Parking and loading areas may be at elevations lower than the flood protection elevation. However, no such areas in general use by the public may be inundated to a depth greater than 2 feet or subject to flood velocities greater than 2 feet per second. Such areas may be located at lower elevations if an adequate warning system exists to protect life and property.

o-2. Parking areas for new or used motor vehicle sales or storage shall be prohibited.

Part 16. Section 295-1011-11-b-2 and 3 of the code is amended to read:

11. STANDARDS FOR DEVELOPMENT IN THE FLOOD STORAGE OVERLAY ZONE.

b. Other Development Standards.

b-2. [[Nø]] >>Except as provided in subd. 4, no<< development which removes flood storage volume shall be allowed unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation is provided in the immediate area of the proposed development to compensate for the volume of storage that is lost. Excavation below the groundwater table shall not be considered as providing an equal volume of storage.

b-3. [[If]] >>Except as provided in subd. 4, if<< compensatory storage cannot be provided, the area shall not be developed unless the entire area in the flood storage overlay zone on this waterway is rezoned to the flood fringe overlay zone. This shall include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without floodplain storage, per sub. 7-b.

Part 17. Section 295-1011-11-b-4 of the code is renumbered 295-1011-11-b-5.

Part 18. Section 295-1011-11-b-4 of code is created to read:

b-4. If the 100-year flood profile and floodplain boundary are adjusted through implementation of a

flood mitigation system plan that is designed to reduce the flood hazard to existing buildings and to not create an increase of greater than or equal to 0.01 foot in the 100-year flood profile at locations upstream or downstream of the project reach, those portions of the flood storage overlay zone that would be removed from the floodplain through implementation of the plan can be developed, or redeveloped, even if an equal volume of compensatory storage is not provided. In such cases, the flood storage overlay zone shall remain in effect along the waterway. For such an adjustment to the flood storage overlay zone, the flood mitigation system plan, including engineering data and calculations showing the new flood profile, shall be submitted to, and approved by, the Wisconsin department of natural resources and the federal emergency management agency, and the zoning map shall be revised to reflect the changed flood storage overlay zone boundary in accordance with the procedures of s. 295-307 and sub. 7.

Part 19. Section 295-1011-15-e-1 to 4 of the code is renumbered 295-1011-15-e-2 to 5.

Part 20. Section 295-1011-15-e-1 of the code is created to read:

15. ADMINISTRATION.

e-1. At least 10 days prior to any public hearing on a proposed floodplain zoning map or text amendment or a variance or special use permit request in a floodplain overlay zone, a copy of the notice of the public hearing.

APPROVED AS TO FORM

Legislative Reference Bureau

Date:_____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date:_____

Department of City Development

LRB08455-2

JDO

09/29/2008

jro -- 12/03/08