



Legislation Details (With Text)

File #: 210880 **Version:** 2
Type: Ordinance **Status:** Passed
File created: 10/12/2021 **In control:** COMMON COUNCIL
On agenda: **Final action:** 7/31/2023
Effective date:

Title: A substitute ordinance relating to floodplain zoning regulations.

Sponsors: THE CHAIR

Indexes: FLOOD PLAINS, ZONING

Attachments: 1. ZND Presentation, 2. City Plan Commission Letter, 3. CPC Staff Report, 4. Zoning Code Technical Committee Letter, 5. Letter from DNR, 6. Proposed Substitute A signed by LRB, 7. Substitute 1 signed by LRB, 8. Notice published 6/30 and 7/7/2023, 9. Hearing Notice List, 10. Legal and Enforceable, 11. Notice published 8/17/2023, 12. Approval of floodplain zoning ordinance

Date	Ver.	Action By	Action	Result	Tally
10/12/2021	0	COMMON COUNCIL	ASSIGNED TO		
10/15/2021	0	CITY CLERK	DRAFT SUBMITTED		
6/29/2023	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	REFERRED TO		
6/29/2023	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	REFERRED TO		
6/30/2023	1	CITY CLERK	PUBLISHED		
7/17/2023	1	CITY PLAN COMMISSION	RECOMMENDED FOR PASSAGE AND ASSIGNED	Pass	6:0
7/25/2023	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	4:0
7/25/2023	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	4:0
7/31/2023	2	COMMON COUNCIL	PASSED	Pass	15:0
8/2/2023	2	MAYOR	SIGNED		
8/17/2023	2	CITY CLERK	PUBLISHED		

210880
SUBSTITUTE 2

THE CHAIR

A substitute ordinance relating to floodplain zoning regulations.

- 295-1107-1 am
- 295-1107-16 cr
- 295-1107-28 cr
- 295-1107-28.5 cr
- 295-1107-40 cr
- 295-1107-85 am
- 295-1107-108 cr

295-1107-114 cr
295-1107-128 cr
295-1107-148 cr
295-1109 rc
295-1111 am
295-1113 rc
295-1117-1 am
295-1117-4 rp
295-1117-5-a rc
295-1117-5-c-2 rc
295-1117-5-c-3 rc
295-1117-5-c-4 cr
295-1117-5-c-5 cr
295-1117-5-c-6 cr
295-1117-5-c-7 cr
295-1117-5.5 cr
295-1117-7 am
295-1119-1 rn
295-1119-1 cr
295-1119-2 rn
295-1119-2 cr
295-1119-3 rn
295-1119-3 cr
295-1119-4 rn
295-1119-4 cr
295-1119-5 rn
295-1119-6 rn
295-1121-1 rn
295-1121-1 cr
295-1121-2 rn
295-1121-2-h rc
295-1121-2-i cr
295-1121-2-j cr
295-1121-2-k cr
295-1121-3 rn
295-1121-3-b rc
295-1121-3-c am
295-1121-4 rn
295-1121-4-0 am
295-1121-4-c rp
295-1121-4-c am
295-1121-4-d rp
295-1121-4-e rn
295-1121-4-e cr
295-1121-4-f rn
295-1121-4-f cr
295-1121-4-g rc
295-1121-4-h rp
295-1121-5 rn

295-1121-6 rn
295-1121-7-g rc
295-1123-2-0 am
295-1123-2-a rc
295-1123-2-b rc
295-1123-2-c am
295-1123-3 am
295-1123-4 am
295-1123-5 am
295-1123-17 cr
295-1127-1 am
295-1127-3-b rc
295-1127-3-c rn
295-1127-3-c cr
295-1127-3-e cr
295-1127-4 rn
295-1127-4 cr
295-1127-5-a am
295-1127-5-b-0 am
295-1128 cr
295-1129-1-0 am
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295-1129-4-b am
295-1129-4-c-0 am
295-1129-4-d am
295-1131-5 cr
295-1131-6 cr
295-1133-1-0 am
295-1133-2-0 am
295-1133-3-d am
295-1133-3-f cr
295-1133-3-g cr
295-1135-1 rn
295-1135-1 cr
295-1135-2 rn
295-1135-2-e am
295-1135-2-i am
295-1135-3 rn
295-1135-3-a-1 am
295-1135-4 rn
295-1135-4-a am
295-1135-4-b-0 am
295-1135-6 cr
295-1137-4-c am
295-1137-4-g cr
295-1137-4-h cr
295-1137-5-a rp
295-1137-5-a am
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295-1137-5-c rn
295-1137-5-d rn
295-1137-5-e rn
295-1137-7 am
295-1139 am
295-1141-3 cr
295-1141-4 cr
295-1149-1-a-0 am
295-1149-1-a-1 am
295-1149-1-a-2 rp
295-1149-1-a-3 ra
295-1149-1-a-4 ra
295-1149-1-a-4 cr
295-1149-1-a-5 rp
295-1149-1-a-6 ra
295-1149-1-a-6 cr
295-1149-1-a-7 cr
295-1149-1-b am
295-1149-2-a am
295-1149-2-b am
295-1149-2-c rc
295-1149-3 rn
295-1149-3 cr
295-1149-4 rn
295-1149-5-a am
295-1150 cr
295-1151 rc
295-1153 cr

This ordinance makes various revisions to the city’s floodplain zoning regulations necessary to bring the city’s regulations into conformity with the Wisconsin department of natural resources model floodplain ordinance.

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

Part 1. Section 295-1107-1 of the code is amended to read:

295-1107. Definitions.

1. ACCESSORY STRUCTURE OR USE means a facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. >>An accessory structure does not contain habitable space.<<

Part 2. Section 295-1107-16, 28, 28.5 and 40 of the code is created to read:

16. BREAKAWAY WALL means a wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

28. COASTAL FLOODPLAIN means an area along the coast of Lake Michigan which is inundated by

the regional flood and which is subject to additional hazard due to wave runup.

28.5. COASTAL HIGH HAZARD AREA means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms.

40. FEDERAL EMERGENCY MANAGEMENT AGENCY means the federal agency that administers the national flood insurance program.

Part 3. Section 295-1107-85 of the code is amended to read:

85. LOWEST FLOOR means the lowest floor of the lowest enclosed area, including basement. ~~[[An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.]]~~ >>An enclosed space as described in s. 295-1128-2-i is not a building's lowest floor.<<

Part 4. Section 295-1107-108, 114, 128 and 148 of the code is created to read:

108. MODERATE WAVE ACTION AREA or MoWA means a special flood hazard area subject to the potential for breaking wave heights of greater than or equal to 1.5 feet, but less than 3 feet, where the primary source of flooding is astronomical tides, storm surges, seiches or tsunamis. A MoWA is an area within zone AE on a flood insurance rate map that is between the inland limit of zone VE and a limit of moderate wave action, where identified.

114. NON-FLOOD DISASTER means a fire, ice storm, tornado, wind storm, mudslide or other destructive act of nature, but excludes a flood.

128. PRIMARY FRONTAL DUNE means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

148. VARIANCE, FLOODPLAIN means an authorization by the board of zoning appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with the dimensional standards, but not the use regulations, contained in this subchapter.

Part 5. Section 295-1109 of the code is repealed and recreated to read:

295-1109. Areas to Be Regulated. This subchapter regulates all areas of special flood hazard identified as zones, A, AO, AH, A1-30, AE, VE, V1-30 or V on the flood insurance rate map. Additional areas identified on maps approved by the Wisconsin department of natural resources and the city may also be regulated under the provisions of this subchapter, where applicable.

Part 6. Section 295-1111 of the code is amended to read:

295-1111. Annexed Areas. The floodplain zoning provisions assigned to land being annexed to the

city of Milwaukee in effect on the date of annexation shall remain in effect and shall be enforced by the city for all annexed areas until the city adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code, as amended, and 44 CFR 59-72, national flood insurance program. These annexed lands are described on the city's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the offices of the department >>of neighborhood services<< . All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

Part 7. Section 295-1113 of the code is repealed and recreated to read:

295-1113. Abrogation And Greater Restrictions. a. This subchapter supersedes all provisions of any city zoning ordinance enacted under s. 62.23 or s. 87.30, Wis. Stats. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

b. The provisions of this subchapter are not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this subchapter imposes greater restrictions, the provisions of this subchapter shall prevail.

Part 8. Section 295-1117-1 of the code is amended to read:

295-1117. Procedures.

1. 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. >>The amendment and notice of public hearing shall be submitted to the regional office of the Wisconsin department of natural resources for review prior to the hearing. A request for an amendment shall include all data required by s. 295-1127-4 and s. 295-1129.<< 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 s. 295-1141 shall be met.

Part 9. Section 295-1117-4 of the code is repealed.

Part 10. Section 295-1117-5-a of the code is repealed and recreated to read:

5. OFFICIAL MAPS AND REVISIONS.

a. Official Maps Adopted. The boundaries of all floodplain overlay zones are designated as A, AE, AH, AO, A1-30, VE, V1-30 or V on the following maps based on the flood insurance study:

a-1. Milwaukee County flood insurance rate map panel numbers 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,

55079C0092E, 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.

a-2. Flood insurance study volumes 55079CV001A, 55079CV002A, 55079CV003A, 55079CV004A and 55079CV005A for Milwaukee county, dated September 25, 2008.

a-3. Flood insurance rate map panel numbers 55133C0114H and 55133C0227H, dated October 19, 2023.

a-4. Flood insurance study volumes 55133001D, 55133CV002D, 55133CV003D, 55133CV004D and 55133CV005D for Waukesha county, dated October 19, 2023.

a-5. Flood insurance rate map panel number 55131C0379D, dated November 20, 2013.

a-6. Flood insurance study volumes 55131CV001C, 55131CV002C, 55131CV003C, 55131CV004C, 55131CV005C and 55131CV006C for Washington county, dated February 25, 2022.

a-7. Letter of map revision 14-05-0354P, dated September 5, 2014.

a-8. Letter of map revision 16-05-0269P, dated September 23, 2016.

a-9. Letter of map revision 16-05-7247P, dated June 23, 2017.

a-10. Letter of map revision 18-05-6243P, dated August 2, 2019.

a-11. Letter of map revision 21-05-3522P, dated April 6, 2023.

a-12. Conditional letter of map revision 21-05-3305R, dated April 11, 2022.

Part 11. Section 295-1117-5-c-2 and 3 of the code is repealed and recreated to read:

c. Official Maps Based on Other Studies.

c-2. The Northridge Lakes dam failure analysis approved by the Wisconsin department of natural resources on October 29, 2010, including:

c-2-a. Map dated October 28, 2010 and titled "Exhibit G - Northridge Lakes Dam Floodplains".

c-2-b. Floodway data table title "Northridge Lakes Dam Failure Floodway Data Table".

c-2-c. Flood profile dated June 16, 2010 titled "Dam Failure Profile".

c-3. The city of Milwaukee flood storage district, Interstate 94 and College Avenue Interchange, on the map accompanying letter of map revision 16-05-0269P, dated August, 2014.

Part 12. Section 295-1117-5-c-4 to 7 of the code is created to read:

c-4. Menomonee River conditional letter of map revision letter of map revision flood storage zone map, flood insurance rate map panel number 0067E, associated with conditional letter of map revision 21-05-3305R issued April 11, 2022.

c-5. Menomonee River conditional letter of map revision letter of map revision flood storage zone map, flood insurance rate map panel number 0086E, associated with conditional letter of map revision 21-05-3305R issued April 11, 2022.

c-6. Menomonee River conditional letter of map revision letter of map revision flood storage zone map, flood insurance rate map panel number 0087E, associated with conditional letter of map revision 21-05-3305R issued April 11, 2022.

c-7. Menomonee River conditional letter of map revision letter of map revision flood storage zone map, flood insurance rate map panel number 0089E, associated with conditional letter of map revision 21-05-3305R issued April 11, 2022.

Part 13. Section 295-1117-5.5 of the code is created to read:

5.5. ESTABLISHMENT OF FLOODPLAIN OVERLAY ZONES. The flood hazard areas regulated by this subchapter are divided into overlay zones as follows:

- a. The floodway overlay zone (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters, within AE zones as shown on the flood insurance rate map or within A zones as shown on the flood insurance rate map when determined according to s. 295-1127-5.
- b. The flood fringe overlay zone (FF) is that portion of a riverine special flood hazard area outside the floodway within AE zones on the flood insurance rate map or, when floodway limits have been determined according to s. 295-1127-5, within A zones, as shown on the flood insurance rate map.
- c. The general floodplain overlay zone (GFP) consists of those riverine areas that may be covered by floodwater during the regional flood in which a floodway boundary has not been delineated on the flood insurance rate map and also includes shallow flooding areas identified as AH and AO zones on the flood insurance rate map.
- d. The flood storage overlay zone (FS) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.
- e. The coastal floodplain overlay zone (CFP) is an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms, including areas identified as zone V, V1-30 or VE on the flood insurance rate map. Where a riverine AE floodway extends into the CFP overlay zone, development within the floodway shall comply with the regulations of both the FW and CFP overlay zones. Where a riverine A zone or AE zone with no floodway determination abuts the CFP overlay zone, the riverine study's floodway limit shall be determined based on standard floodway expansion principles within the CFP overlay zone and development within the floodway shall comply with the standards for both the FW and CFP overlay zones.

Part 14. Section 295-1117-7 of the code is amended to read:

7. >>FLOODPLAIN<< VARIANCES. Pursuant to s. 295-1149-2-c-1, the board of zoning appeals shall take no action on any application for a >>floodplain<< 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 15. Section 295-1119-1 to 6 of the code is renumbered 295-1119-5 to 10.

Part 16. Section 295-1119-1 to 4 of the code is created to read:

295-1119. Standards Applicable to All Floodplain Overlay Zones.

1. The commissioner of neighborhood services shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and sure that all necessary permits have been received from those governmental agencies whose approval is required by federal or state law.

2. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be:

a. Designed and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

b. Constructed with flood-resistant materials;

c. Constructed by methods and practices that minimize flood damage; and

d. In the case of mechanical and utility equipment, elevated to or above the flood protection elevation.

3. If a subdivision or other proposed new development is in a flood-prone area, the commissioner of neighborhood services shall assure that:

a. The proposed subdivision or other new development is consistent with the need to minimize flood damage within the flood-prone area;

b. Public utilities and facilities such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; and

c. Adequate drainage is provided to reduce exposure to flood hazards.

4. All subdivision proposals, including manufactured home parks, shall include regional flood elevation and floodway data for any development that meets the definition of a subdivision and all other requirements of s. 295-1129.

Part 17. Section 295-1121-1 to 6 of the code is renumbered 295-1121-2 to 7.

Part 18. Section 295-1121-1 of the code is created to read:

295-1121. Standards for Development in the Floodway Overlay Zone (FW).

1. APPLICABILITY. This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 295-1127-4.

Part 19. Section 295-1121-2-h of the code is repealed and recreated to read:

2. PERMITTED USES.

h. Portable latrines that are removed prior to flooding and systems associated with recreational areas and Wisconsin department of natural resources-approved campgrounds that meet the applicable provisions of this code and ch. SPS 383, Wis. Adm. Code.

Part 20. Section 295-1121-2-i to k of the code is created to read:

i. Public or private wells used to obtain potable water for recreational areas that meet the requirements of this code and chs. NR 811 and NR 812, Wis. Adm. Code.

j. Wastewater treatment ponds or facilities permitted under s. NR 110.15(3)(b), Wis. Adm. Code.

k. Sanitary sewer or water supply lines to service existing or proposed development located outside the floodway that complies with the regulations for the floodplain area occupied.

Part 21. Section 295-1121-3-b of the code is repealed and recreated to read:

3. GENERAL DEVELOPMENT STANDARDS.

b. The applicant shall provide an analysis calculating the effects of the proposal on regional flood height to determine the effects of the proposal according to s. 295-1119 and 295-1129. The analysis shall be completed by a registered professional engineer in the state of Wisconsin.

Part 22. Section 295-1121-3-c of the code is amended to read:

c. The commissioner shall deny the permit application if the project will cause any increase in the flood elevations upstream or downstream based on the data submitted pursuant to par. b. >>Any encroachment in the regulatory floodway is prohibited unless the data submitted for par. b demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in s. 295-1141.<<

Part 23. Section 295-1121-4-0 of the code is amended to read:

4. STRUCTURES. A structure accessory to a permanent open space use >> including utility or sanitary facilities << or functionally dependent on a waterfront location may be allowed by permit if the commissioner finds that the structure will comply with all of the following criteria:

Part 24. Section 295-1121-4-c and d of the code is repealed.

Part 25. Section 295-1121-4-e and f of the code is renumbered 295-1121-4-c and d.

Part 26. Section 295-1121-4-c of the code is amended to read:

c. Mechanical and utility equipment will be elevated to or above ~~[[, or floodproofed to or above,]]~~ the flood protection elevation.

Part 27. Section 295-1121-4-e and f of the code is created to read:

e. The structure shall either have the lowest floor elevated to or above the flood protection elevation or meet all of the following standards:

e-1. Have the lowest floor elevated to or above the regional flood elevation and be dry-floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to the flood protection elevation without human intervention during flooding.

e-2. Have structural components capable of meeting all provisions of par. g.

e-3. Be certified by a registered professional engineer or architect, through the use of a federal emergency management agency floodproofing certificate, that the design and methods of construction are in accordance with par. g.

f. For a structure designed to allow the automatic entry of floodwaters below the regional flood elevation, the applicant shall submit a plan that meets pars. a through e and meets or exceeds all of the following standards:

f-1. The lowest floor shall be elevated to or above the regional flood elevation.

f-2. The structure shall have a minimum of 2 openings having a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding.

f-3. The bottom of all openings shall be no higher than one foot above the lowest adjacent grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of flood waters. If these coverings or devices do not permit automatic entry and exit of flood waters, they shall remain open.

f-4. The use shall be limited to parking, building access or limited storage.

Part 28. Section 295-1121-4-g of the code is repealed and recreated to read:

g. Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:

g-1. Reinforcement of floors and walls to resist rupture, collapse or lateral movement caused by water pressures or debris buildup.

g-2. Construction of wells, water supply systems and waste treatment systems to prevent the

entrance of flood waters in such systems and in accordance with the provisions of sub. 6-b and c.

g-3. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors.

g-4. Cutoff valves on sewer lines or the elimination of gravity flow basement drains.

g-5. Placement of utilities to or above the flood protection elevation.

Part 29. Section 295-1121-4-h of the code is repealed.

Part 30. Section 295-1121-7-g of the code is repealed and recreated to read:

7. PROHIBITED USES.

g. Campgrounds.

Part 31. Section 295-1123-2-0 of the code is amended to read:

295-1123. Standards for Development in the Flood Fringe Overlay Zone (FF).

2. RESIDENTIAL USE REGULATIONS. Any structure, including a manufactured home, which is to be newly constructed or moved into a flood fringe overlay zone shall meet or exceed the following standards ~~[[[:]] >>].~~ Any existing structure in the flood fringe shall meet the requirements of s. 295-1135.<<

Part 32. Section 295-1123-2-a and b of the code is repealed and recreated to read:

a. All new construction, including placement of manufactured homes, and substantial improvement of residential structures shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the flood fringe overlay zone unless it can be shown to meet s. 295-1141.

b. Notwithstanding par. a, a basement or crawlspace floor may be placed at the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind shall be permitted below the regional flood elevation.

Part 33. Section 295-1123-2-c of the code is amended to read:

c. Contiguous dry-land access shall be ~~[[provide]] >>~~provided~~<<~~ from the structure to land outside of the floodplain, except as provided in par. d.

Part 34. Section 295-1123-3 to 5 of the code is amended to read:

3. ACCESSORY STRUCTURES. ~~[[An accessory structure]] >>~~In addition to s. 295-1119, new construction or substantial improvement of an accessory structure~~<<~~ shall be constructed on fill with

its lowest floor at or above the regional flood elevation.

4. COMMERCIAL AND INSTITUTIONAL USES. ~~[[Any]]~~ >>In addition to s. 295-1119, any<< commercial or institutional structure which is erected, altered or moved into a flood fringe overlay zone shall meet the requirements of sub. 2. Subject to the requirements of subs. 6 and 15, 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.

5. MANUFACTURING AND INDUSTRIAL USES. ~~[[Any]]~~ >>In addition to s. 295-1119, any<< manufacturing or industrial structure which is erected, altered or moved into a flood fringe overlay zone shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing measures in s. 295-1133. Subject to the requirements of subs. 6 and 15, 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 35. Section 295-1123-17 of the code is created to read:

17. CAMGROUNDS. Campgrounds are a prohibited use.

Part 36. Section 295-1127-1 of the code is amended to read:

295-1127. Standards for Development in the General Floodplain Overlay Zone (GF).

1. APPLICABILITY. The provisions of this section shall apply to all floodplains mapped as A, AO >>AE<< or AH zones >>within which a floodway is not delineated on the flood insurance rate maps identified in s. 295-1117-5<< .

Part 37. Section 295-1127-3-b of the code is repealed and recreated to read:

3. STANDARDS.

b. In the AO zone, new construction and substantial improvement of structures shall have the lowest floor, including the basement floor, elevated to or above one of the following:

b-1. The depth, in feet, as shown on the flood insurance rate map above the highest adjacent natural grade.

b-2. If the depth is not specified on the flood insurance rate map, 2 feet above the highest adjacent natural grade.

Part 38. Section 295-1127-3-c of the code is renumbered 295-1127-3-d.

Part 39. Section 295-1127-3-c of the code is created to read:

c. In the AH zone, new construction and substantial improvement of structures shall have the lowest floor, including the basement floor, elevated to or above the flood protection elevation.

Part 40. Section 295-1127-3-e of the code is created to read:

e. All development in zones AO and AH shall meet the requirements of s. 295-1123 applicable to flood fringe areas.

Part 41. Section 295-1127-4 of the code is renumbered 295-1127-5.

Part 42. Section 295-1127-4 of the code is created to read:

4. BOUNDARIES. For proposed development in zone A, or in zone AE within which a floodway is not delineated on the flood insurance rate map identified in s. 295-1117, the boundaries of the regulatory floodway shall be determined pursuant to sub. 5. If the development is proposed to encroach upon the regulatory floodway, the development shall be subject to the standards of s.295-1121. If the development is proposed to be located entirely within the flood fringe, the development is subject to the standards of s. 295-1123.

Part 43. Section 295-1127-5-a of the code is amended to read:

5. DETERMINING FLOODWAY AND FLOOD FRINGE LIMITS.

a. Require the applicant to submit 2 copies of an aerial photograph ~~[[ef]]~~ >>or<< a plan which shows the proposed development with respect to the general floodplain overlay zone limits, stream channel and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and floodproofing measures, and the flood zone as shown on the flood insurance rate map.

Part 44. Section 295-1127-5-b-0 of the code is amended to read:

b. Require the applicant to furnish ~~[[either or both]]~~ >>any<< of the following information deemed necessary by the Wisconsin department of natural resources to evaluate the effects of the proposal upon flood height, flood flows and regional flood elevation, and to determine floodway boundaries:

Part 45. Section 295-1128 of the code is created to read:

295-1128. Standards for Development in the Coastal Floodplain Overlay Zone (CFP). 1.

APPLICABILITY. The provisions of this section apply to all coastal floodplain overlay zones shown on the floodplain zoning maps, including zones V, V1-30 and VE. Where a floodway shown on the floodplain zoning maps, a floodway determined as described in s. 295-1117-5.5-3, or a regulatory floodway identified pursuant to s. 295-1127-5 extends into a coastal floodplain district, development shall comply with the standards of ss. 295-1121 and 295-1128.

2. STANDARDS. Development in the coastal floodplain overlay zone shall meet the requirements of s. 295-1119, as well as the following:

a. New construction shall be located landward of the ordinary high water mark.

b. Bulkheads, seawalls, revetments and other erosion control measures shall not be connected to the foundation of superstructure of a building, but shall be designed to not direct floodwaters or increase flood forces or erosion impacts of the foundation or superstructure of any building.

c. Man-made alterations of sand dunes shall be prohibited unless an engineering report

demonstrates that the alterations will not increase potential flood damage by reducing the wave and flow dissipation characteristics of the sand dunes.

d. The use of fill for structural support of buildings shall be prohibited.

e. Non-structural fill shall be permitted only if an engineering report demonstrates that the fill will not cause runup, ramping, or deflection of floodwaters that cause damage to buildings.

f. New construction and substantial improvement of buildings shall be elevated, consistent with s. SPS 321.34, Wis. Adm. Code, on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor, excluding the pilings or columns, is elevated to or above the flood protection elevation, provided:

f-1. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values shall be those associated with the base flood. Wind loading values shall be those defined according to the American society of civil engineers 7-16, "minimum design loads and associated criteria for buildings and other structures," or other equivalent standard.

f-2. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of par. f.

g. New construction and substantial improvement of buildings shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system.

h. For the purpose of par. g, a breakaway wall shall have a design safe loading resistance of not less than 10 and not more than 20 pounds per square foot.

i. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot, either by design or by local or state codes, may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet all of the following conditions:

i-1. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood.

i-2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components, both structural and non-structural. Water loading values shall be those associated with the base flood. Wind loading values shall be those defined according to American society of civil engineers 7-16, "minimum design loads and associated criteria for buildings and other structures," or equivalent standard.

j. All space enclosed by breakaway walls, open wood lattice-work, or insect screening below the lowest floor shall be used solely for parking, building access, or storage.

k. Within flood-prone areas, new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

L. Within flood-prone areas, new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems, and discharges from the systems into flood waters and onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

m. All mobile recreational vehicles shall be on-site for less than 180 consecutive days and shall be either fully licensed and ready for highway use or meet the standards of pars. a through L. A mobile recreational vehicle shall be considered ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices, and has no permanently attached additions.

n. Manufactured homes placed or substantially improved within the coastal floodplain district shall meet the standards of pars. a through L.

Part 46. Section 295-1129-1-0 of the code is amended to read:

295-1129. Permits Required.

1. GENERAL REQUIREMENTS. It shall be unlawful to use any structure or land, or to erect, alter, relocate, extend >>, repair<< or substantially improve any structure or sewer or water facilities, prior to the issuance of a permit. If an amendment to the official zoning map is required, no permit shall be issued by any city official until a letter of map revision is issued by the federal emergency management agency for the proposed change. Furthermore, it shall be the responsibility of the permit applicant to secure all necessary permits required by local, state or federal agencies, including but not limited to:

Part 47. Section 295-1129-3-h of the code is amended to read:

3. SITE DEVELOPMENT PLAN.

h. Data sufficient to determine the regional flood elevation, in national geodetic vertical datum, >>or North American vertical datum,<< at the location of the development and to determine whether the requirements of s. 295-1121 or 295-1123, as applicable, are met.

Part 48. Section 295-1129-4-b, c-0 and d of the code is amended to read:

4. HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT.

b. Zone A Floodplains >>and AE Zones Within Which a Floodway is not Delineated<< ; Hydrology. The appropriate method shall be based on the standards in ch. NR 116.07(3), Wis. Admin. Code.

c. Zone A Floodplains >>and AE Zones Within Which a Floodway is not Delineated<< ; Hydraulic Modeling. The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, and the following:

d. Zone A Floodplains >>and AE Zones Within Which a Floodway is not Delineated<<; Mapping. A work map of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation. If any part of the proposed development is in the floodway, it shall be added to the base model to show the difference between existing and proposed conditions. The study shall ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

Part 49. Section 295-1131-5 and 6 of the code is created to read:

295-1131. Certificate of Compliance.

5. Where applicable pursuant to s. 295-1127-3, the applicant shall submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor, excluding pilings or columns, and an indication of whether the structure contains a basement.

6. Where applicable pursuant to s. 295-1127-3, the applicant shall submit a certification by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice.

Part 50. Section 295-1133-1-0 of the code is amended to read:

295-1133. Floodproofing.

1. No permit or >>floodplain<< variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits:

Part 51. Section 295-1133-2-0 of the code is amended to read:

2. For a structure designed to allow the entry of floodwaters, no permit or >>floodplain<< variance shall be issued until the applicant submits a plan that meets either of the following:

Part 52. Section 295-1133-3-d of the code is amended to read:

3.

d. ~~[[Eliminate]]~~ >>Minimize or eliminate<< infiltration of floodwaters.

Part 53. Section 295-1133-3-f and g of the code is created to read:

f. Placement of essential utilities to or above the flood protection elevation.

g. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:

g-1. The enclosed area shall be designed by a registered architect or engineer to allow for the

efficient entry and exit of flood waters without human intervention. A minimum of 2 openings shall be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening shall not be more than 12 inches above the adjacent grade.

g-2. The parts of the foundation located below the flood protection elevation shall be constructed of flood-resistant materials.

g-3. Mechanical and utility equipment shall be elevated to or above the flood protection elevation.

g-4. The use shall be limited to parking, building access or limited storage.

Part 54. Section 295-1135-1 to 4 is renumbered 295-1135-2 to 5.

Part 55. Section 295-1135-1 of the code is created to read:

295-1135. Nonconformities.

1. APPLICABILITY. a. The standards in this section shall apply to all uses and buildings that do not conform to the provisions of this chapter or with s. 87.30, Wis. Stats., ss. NR 116.12 to 14, Wis. Adm. Code, or 44 CFR 59-72, national flood insurance program. These standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the effective date of this subchapter or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning regulations in effect at the time the use or structure was created.

b. As permit applications are received for additions, modifications or substantial improvements to nonconforming buildings in the floodplain, the department of neighborhood services shall develop a list of those nonconforming buildings, their present equalized assessed values, and the costs associated with changes to those buildings.

Part 56. Section 295-1135-2-e and i of the code is amended to read:

2. GENERAL.

e. ~~[[No structural modification or addition to]]~~ >>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 section. Contiguous dry-land access shall be provided for residential and commercial uses in compliance with s. 295-1123-2. The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this subsection.

i. No maintenance >>on a per-event basis<< to any nonconforming structure or any structure with a nonconforming use, the cost of which 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 code. Contiguous dry-

land access shall be provided for residential and commercial uses in compliance with s. 295-1123-2. >>Maintenance to any nonconforming structure which does not exceed 50% of the structure's present equalized assessed value on a per-event basis does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.<<

Part 57. Section 295-1135-3-a-1 of the code is amended to read:

3. FLOODWAY OVERLAY ZONE.

a-1. The modification or addition has been granted a permit or >>floodplain<< variance which meets all code requirements.

Part 58. Section 295-1135-4-a and b-0 of the code is amended to read:

4. FLOOD FRINGE OVERLAY ZONE.

a. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or >>floodplain<< variance by the city and meets the requirements of s. 295-1123, except where par. b is applicable.

b. Where compliance with the provisions of par. a would result in unnecessary hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the board, using the procedures established in s. 295-1149-1, may grant a >>floodplain<< variance from the provisions of par. a for modifications or additions, using the criteria listed in this paragraph. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if all of the following conditions are met:

Part 59. Section 295-1135-6 of the code is created to read:

6. COASTAL FLOODPLAIN OVERLAY ZONE. a. New construction and substantial improvement shall meet the standards of s. 295-1128.

b. No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the building, 50% of the building's present equalized assessed value, shall be allowed in a coastal floodplain overlay zone unless the entire building is permanently altered to conform with the standards of s. 295-1128.

Part 60. Section 295-1137-4-c of the code is amended to read:

295-1137. Administration.

4.

c. Records of water surface profiles, floodplain zoning maps and ordinances, and nonconforming uses and structures, including changes, appeals, >>floodplain<< variances and amendments.

Part 61. Section 295-1137-4-g and h of the code is created to read:

g. In the coastal floodplain overlay zone, documentation of the certified elevation of the bottom of the

lowest horizontal structural member of new construction or substantial improvements.

h. In the coastal floodplain overlay zone, certification by a licensed professional engineer or architect where required for new construction or substantial improvement under s. 295-1128.

Part 62. Section 295-1137-5-a of the code is repealed.

Part 63. Section 295-1137-5-b to e of the code is renumbered 295-1137-5-a to d.

Part 64. Section 295-1137-5-a of the code is amended to read:

5.

a. Within 20 days of the decision, a copy of any board decision on a >>floodplain<< variance request or an appeal for a map or text interpretation.

Part 65. Section 295-1137-7 of the code is amended to read:

7. Submit copies of amendments ~~[[as well as biennial reports of those amendments,]]~~ to the federal emergency management agency regional office.

Part 66. Section 295-1139 of the code is amended to read:

295-1139. Government Agencies Regulated. Unless specifically exempted by law, the city of Milwaukee, the county of Milwaukee, the Milwaukee board of school directors, the housing authority and the redevelopment authority shall comply with all applicable provisions of this subchapter and obtain all necessary permits. State agencies shall be required to comply if s. 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin department of transportation shall be exempt when s. 30.2022, Wis. Stats., applies. >>Although exempt from city zoning permit and permit fee requirements, the Wisconsin department of transportation shall provide sufficient project documentation and analysis to ensure that the city is in compliance with federal, state and city floodplain standards.<<

Part 67. Section 295-1141-3 and 4 of the code is created to read:

295-1141. Removal of Lands from Floodplain.

3. The delineation of any of the floodplain districts may be revised by the city where natural or man-made changes have occurred or where more detailed studies have been conducted. However, prior to any such change, approval shall be obtained from the Wisconsin department of natural resources and the federal emergency management agency. A completed letter of map revision is a record of this approval. The commissioner shall not sign a community acknowledgement form unless both of the following criteria are met:

a. The land or the land around the structure shall be filled at least 2 feet above the regional or base flood elevation.

b. The fill shall be contiguous to land outside the floodplain. The applicant shall obtain a floodplain development permit before applying for a letter of map revision or a letter of map revision based on

fill.

4. Removal of lands from the floodplain may also occur by operation of s. 87.30(1)(e), Wis. Stats., if a property owner has obtained a letter of map amendment from the federal emergency management agency under 44 CFR 70.

Part 68. Section 295-1149-1-a-0 and 1 of the code is amended to read:

295-1149. Board of Zoning Appeals Procedures.

1. ADDITIONAL STANDARDS FOR FLOODPLAIN OVERLAY ZONES.

a. In addition to the criteria in s. 295-311-3-d, no >>floodplain<< variance for development or use of property in a floodplain overlay zone shall be granted by the board of zoning appeals unless the board finds that:

a-1. The >>floodplain<< variance will not cause any increase in the regional flood elevation.

Part 69. Section 295-1149-1-a-2 of the code is repealed.

Part 70. Section 295-1149-1-a-3 and 4 of the code is renumbered 295-1149-1-a-2 and 3 and amended to read:

a-2. The applicant has demonstrated good and sufficient cause for granting the >>floodplain<< variance.

a-3. The >>floodplain<< variance is the minimum relief necessary to allow the proposed development or use.

Part 71. Section 295-1149-1-a-4 of the code is created to read:

a-4. The floodplain variance will not result in additional threats to public safety or extraordinary expense, create a nuisance, cause fraud on or victimize the public, or conflict with existing local laws or ordinances.

Part 72. Section 295-1149-1-a-5 of the code is repealed.

Part 73. Section 295-1149-1-a-6 of the code is renumbered 295-1149-1-a-5 and amended to read:

a-5. The >>floodplain<< variance will not increase costs for rescue and relief efforts.

Part 74. Section 295-1149-1-a-6 and 7 of the code is created to read:

a-6. The floodplain variance shall not allow actions without the amendments to this subchapter or map or maps required in s. 295-1143.

a-7. The floodplain variance shall not allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

Part 75. Section 295-1149-1-b of the code is amended to read:

b. Whenever the board grants a >>floodplain<< variance for development or use of property in a floodplain overlay zone, the board shall notify the applicant in writing that the >>floodplain<< variance may increase risks to life and property and that flood insurance premiums may increase up to \$25 per \$100 of coverage. A copy of this notice shall be maintained with the >>floodplain<< variance record.

Part 76. Section 295-1149-2-a of the code is amended to read:

2. ADDITIONAL PROCEDURES RELATING TO FLOODPLAIN AND SHORELAND-WETLAND OVERLAY ZONE.

a. Certified Floodproofing Measures. No permit or >>floodplain<< variance for development in a floodplain overlay zone shall be issued until the applicant submits a plan certified by a registered professional engineer or architect that the proposed floodproofing measures will protect the structure or development to the flood protection elevation.

Part 77. Section 295-1149-2-b and c of the code is repealed and recreated to read:

b. Hearing Notifications. Notice of a hearing relating to a request for a floodplain variance or a special use permit in a floodplain or shoreland-wetland overlay zone in accordance with s. 19.84, Wis. Stats. shall be mailed to the parties of interest and to the regional office of the Wisconsin department of natural resources at least 10 days in advance of the hearing. The notice shall specify the date, time, place and subject of the hearing.

c. Board Decisions. Every decision rendered by the board shall:

c-1. Be transmitted to the regional office of the Wisconsin department of natural resources within 10 days of the effective date of the decision.

c-2. State the specific facts which are the basis for the board's decision.

c-3. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction, or grant or deny the floodplain variance application.

c-4. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a floodplain variance, clearly stated in the recorded minutes of the board proceedings.

Part 78. Section 295-1149-3 and 4 of the code is renumbered 295-1149-4 and 5.

Part 79. Section 295-1149-3 of the code is created to read:

3. REVIEW APPEALS OF PERMIT DENIALS. The board shall review all data related to the appeal. This may include, but is not limited to, all of the following:

a. Permit application data listed in s. 295-1129.

- b. Floodway or flood fringe determination data per s. 295-1127-4.
- c. Data listed in s. 295-1121-2 where the applicant has not submitted this information to the commissioner.
- d. Other data submitted to the board.

Part 80. Section 295-1149-5-a of the code is amended to read:

5. FLOODPLAIN BOUNDARY DISPUTES.

- a. If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. ~~[[If none exist, other evidence may be examined.]]~~

Part 81. Section 295-1150 of the code is created to read:

295-1150. Compliance. 1. No structure or use within areas regulated by this subchapter shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations that apply to uses within the jurisdiction of these regulations.

2. Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with s. 295-1151.

3. Floodplain development permits issued on the basis of plans and applications approved by the commissioner authorize only the use, and arrangement, set forth in the approved plans and applications, or amendments thereto if approved by the commissioner. Use, arrangement or construction contrary to that authorized shall be deemed a violation of this subchapter and punishable in accordance with s. 295-1151.

Part 82. Section 295-1151 of the code is repealed and recreated to read:

295-1151. Enforcement and Penalties. Any violation of the provisions of this subchapter by any person shall be unlawful and shall be referred to the city attorney, who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the city a penalty of not more than \$50, together with a taxable cost of such action. Each day of continued violations shall constitute a separate offense. Every violation of this subchapter is a public nuisance, and the creation of such nuisance may be enjoined, and the maintenance of such nuisance may be abated by action at suit of the city, the state, or any citizen thereof pursuant to s. 87.30, Wis. Stats.

Part 83. Section 295-1153 of the code is created to read:

295-1153. Severability. Should any portion of this subchapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of the subchapter shall not be affected.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Department of City Development

LRB176959-3

Jeff Osterman

07/10/2023