

**SUBSTITUTE – VERSION 2 #29671**

DRAFTER'S ANALYSIS: Wis. Stat. § 87.30 requires the City of Madison to adopt a reasonable and effective floodplain zoning ordinance. This amendment incorporates specific definitions and other language required under Wis. Admin. Code § NR 116.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (7) entitled “General Development Standards” of Section 28.121 entitled “Floodplain Overlay Districts” of the Madison General Ordinances is amended to read as follows:

“(7) General Development Standards.

- (a) No development shall be allowed in floodplain areas which will:
  - 1. Obstruct flow, defined as development that blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or
  - 2. Increase regional flood height due to floodplain storage area lost, which ~~equals or exceeds 0.04~~ 0.00 foot.
- (b) Obstructions or increases ~~equal to or greater than 0.04~~ 0.00 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines, and water surface profiles.
- (c) The Zoning Administrator shall deny permits where it is determined that the proposed development will obstruct flow or increase regional flood heights greater than 0.04 0.00 foot ~~or greater~~ based on the adopted Flood Insurance Rate Map or other adopted map, unless amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles.
- (d) All proposed building sites in subdivisions or new developments in flood prone areas shall be reasonably free from flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions and all new development shall be reviewed for compliance with the above standards. All proposals (including manufactured home parks) shall include regional flood elevation and floodway data.”

2. Paragraph 3. of Subdivision (a) entitled “General” of Subsection (3) entitled “Standards for Developments in Floodway Areas” of Section 28.122 entitled “F1 Floodway District” of the Madison General Ordinances is amended to read as follows:

“3. The Zoning Administrator shall deny the permit application if the project will increase flood elevations upstream or downstream more than 0.04 0.00 foot ~~or more~~, based on the data submitted for Subparagraph 2.b. above.”

3. Paragraph 2. of Subdivision (b) entitled “Structures” of Subsection (3) entitled “Standards for Developments in Floodway Areas” of Section 28.122 entitled “F1 Floodway District” of the Madison General Ordinances is amended to read as follows:

"2. The structures are constructed and placed on the building site so as to increase flood heights ~~less no more~~ than ~~0.04~~ 0.00 foot and minimally obstruction to the flow of floodwaters. Structures shall be constructed with the long axis parallel to the direction of flow of floodwaters, and approximately on the same line as adjoining structures."

4. Subdivision (a) of Subsection (2) entitled "Standards for Development in Flood Storage District" of Section 28.125 entitled "F4 Flood Storage District" of the Madison General Ordinances is amended to read as follows:

(a) Development in a flood storage district shall not cause an increase ~~equal to or greater than 0.04~~ 0.00 of a foot in the height of the regional flood."

5. Subdivision (f) of Subsection (2) entitled "Conditions" of Section 28.126 entitled "NonConformities" of the Madison General Ordinances is amended to read as follows:

"(f) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would be equal to or exceed fifty percent (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 ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Sec. 28.123(a)3. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the fifty percent (50%) provisions of this paragraph;"

6. Paragraph 2. of Subdivision (a) of Subsection (3) entitled "Floodway District" of Section 28.126 entitled "NonConformities" of the Madison General Ordinances is amended to read as follows:

"2. Meets the requirements of Section 28.126(1) and (2)."

7. Subsection (5) entitled "Nonconformities in Flood Storage Areas" of Section 28.126 entitled "NonConformities" of the Madison General Ordinances is amended to read as follows:

"(5) Nonconformities in Flood Storage Areas.  
No modifications or additions shall be allowed to any nonconforming structure in a flood storage district unless the standards in Sec. 28.125(1) and (2) are met."

8. Subdivision (c) of Subsection (10) entitled "Restrictions on Residential Parking" of Section 28.141 entitled "Parking and Loading Standards" of the Madison General Ordinances is amended to read as follows:

"(c) A mobile recreational vehicle (RV) associated with residential uses may be parked as a passenger vehicle but shall not be utilized for living space or storage of goods, materials or equipment other than is considered part of the RV or essential to its function."

9. Subdivision (d) of Subsection (1) entitled "Purpose" of Subsection 28.182 entitled "Text and Map Amendments" of the Madison General Ordinances is amended to read as follows:

"(d) Any fill or floodplain encroachment that will obstruct flow, causing an increase of more than 0.04 0.00 foot ~~or more~~ in regional flood height."

10. Paragraph 5. of Subdivision (a) entitled "Recommendation by the City Plan Commission" of Subsection (5) entitled "Decision" of Section 28.182 entitled "Text and Map Amendments" of the Madison General Ordinances is amended to read as follows:

“5. All map amendments that obstruct flow, or increase regional flood height greater than 0.04 0.00 foot ~~or more~~ require flooding easements or other appropriate legal arrangement from all adversely affected property owners.”

11. Subdivision (e) of Subsection (3) entitled “Issuance of Zoning Certificates” of Section 28.202 entitled “Zoning Administrator” of the Madison General Ordinances is amended to read as follows:

“(e) No change in use shall be made until a zoning certificate has been issued by the Zoning Administrator. Every certificate shall state that the use complies with all provisions of this ordinance. For the purposes of floodplain regulations, this certificate shall also be known as a Certificate of Compliance. When applicable in floodplain areas, the Zoning Administrator shall require a certification by a registered professional engineer or architect that the finished fill, lowest floor, and flood elevations and other floodplain regulatory factors were accomplished in compliance with the provisions of this ordinance. In the floodplain areas, it shall be the responsibility of the applicant to secure all other necessary permits from all appropriate Federal and Wisconsin State agencies.”

12. Paragraph 1. of Subdivision (h) entitled “Approval Criteria” of Subsection (5) entitled “Appeals to Decisions of the Zoning Administrator” of Section 28.205 entitled “Zoning Board of Appeals” of the Madison General Ordinances is amended to read as follows:

“1. For appeals concerning increases in regional flood elevation the Board shall:

- a. Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases ~~equal to or~~ greater than 0.04 0.00 foot may only be allowed after amending the flood profile and map and any appropriate legal arrangements are made with all adversely affected property owners.
- b. Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase ~~equal to or~~ greater than 0.04 0.00 foot provided no other reasons for denial exist.”

13. Subsection (1) entitled “In General” of Section 28.207 entitled “Penalties” of the Madison General Ordinances is amended to read as follows:

“(1) In General. Any person who violates any provisions of this chapter or fails to comply with any of its requirements shall upon conviction thereof be subject to a forfeiture of not less than one dollar (\$1.00) and not more than one thousand dollars (\$1,000). For a violation of any of the provisions of the floodplain regulations, Sections 28.121 through 28.126, the maximum forfeiture shall be fifty dollars (\$50). Each day or portion thereof such violation continues shall be considered a separate offense.”

14. Section 28.211 entitled “Definitions” of the Madison General Ordinances is amended by amending, creating or repealing therein the following:

“Basement. That portion of a building which is included between the surface of a floor and the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it and the floor of which is wholly or partly below ground level. For the purposes of floodplain regulations, a basement is any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.”

Bulkhead Line. A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to Wis. Stat. § 30.11 and which allows limited filling between this bulkhead line and the original ordinary

highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

Campground. Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four (4) or more camping units, or which is advertised or represented as a camping area.

Camping Unit. Any portable device, no more than four hundred (400) square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.

Certificate of Compliance. A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

Crawlways/Crawl Space. An enclosed area below the first usable floor of a building, generally less than five (5) feet in height, used for access to plumbing and electrical utilities.

Deck. An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

Dryland Access. A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

Federal Emergency Management Agency (FEMA). The federal agency that administers the National Flood Insurance Program.

Flood. A temporary rise in stream flow or stage that results in water overtopping its banks and inundating areas adjacent to the channel.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

- (a) The overflow or rise of inland waters; or
- (b) The rapid accumulation or runoff of surface waters from any source; or
- (c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
- (d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

Flood Hazard Boundary Map. A map prepared by the Federal Insurance Administration of the U. S. Federal Emergency Management Agency, designating areas of special flood hazard within a given community. Flood hazard areas are designated as A Zones. Said map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM). A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

Flood Frequency. The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.

Flood Insurance Study. A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

Floodplain Island. A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

High Flood Damage Potential. Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

Historic Structure. Any structure that is either:

- (a) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

Increase in Regional Flood Height. A calculated upward rise in the regional flood elevation greater than 0.00 foot based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

Lot Coverage. The total area of all buildings, measured at grade, all accessory structures including pools, patios, etc., and all paved areas as a percentage of the total area of the lot, with the following exceptions: sidewalks or paved paths no wider than five (5) feet, pervious pavement, and green roofs and decks.

Manufactured Home Park or Subdivision, Existing. A parcel of land, divided into two (2) or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

Manufactured/Mobile Home Park, Expansion. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.

Mobile Recreational Vehicle. A vehicle which is built on a single chassis, four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway

use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

Municipality/Municipal. When used in the floodplain regulations, Secs. 28.121 through 28.126, means the county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

North American Vertical Datum (NAVD). Elevations referenced to mean sea level datum, 1988 adjustment.

National Geodetic Vertical Datum (NGVD). Elevations referenced to mean sea level datum, 1929 adjustment.

Obstruction to Flow. Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.

Person. An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

Private Sewage System. A sewage treatment and disposal system serving one (1) structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) structure or a system located on a different parcel than the structure.

Public Utilities. Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

Reasonably Safe from Flooding. Base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational Equipment, Major. Major recreational equipment includes boats, canoes and snowmobiles not on vehicles, camping units, mobile recreational vehicles, and camping and luggage carrying devices designed or intended to be mounted on a vehicle.

Roof Deck. A deck constructed on top of another structure.

Structure, Habitable. Any structure or portion thereof used or designed for human habitation.

Unnecessary Hardship. Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height, bulk or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

Use, Land. In floodplains, any nonstructural use made of unimproved or improved real estate.

Variance, Area. An authorization by the Zoning Board of Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards contained in the zoning ordinance.

Variance, Use. An authorization by the Zoning Board of Appeals for the use of property in a manner which is inconsistent with the listed uses contained in the zoning ordinance.

Violation. In a floodplain, the failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

Watershed. The entire region contributing runoff or surface water to a watercourse or body of water.

Water Surface Profile. A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

Well. An excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.”