

**Legistar File No. 86807 Body**

DRAFTER'S ANALYSIS: In conjunction with the newly created Chapter 21: Floodplain Regulations (Legistar File No. 86804), this ordinance repeals current sections of Madison General Ordinance Chapter 28.

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

1. Subsection (3) entitled "Floodplain Maps" of Section 28.022 entitled "Incorporation of Zoning District Maps" of the Madison General Ordinances is repealed and recreated as Section 21.05(2)

2. Subsection (1) entitled "Purpose" of Section 28.182 entitled "Text and Map Amendments" of the Madison General Ordinances is amended as follows:

"(1) Purpose.

This section allows the Common Council to amend the text of this Chapter or the zoning districts in order to promote public health, safety, and welfare throughout the City, giving due consideration to existing conditions, conservation of property values, building development providing best advantage to the City, the current use of property, and in the case of map amendments, the cost of providing municipal services to the property and uses accommodated by the map amendment.

In the case of map amendments to the floodplain zoning districts, the Common Council shall follow the requirements and procedures in Madison General Ordinance Chapter 21. actions that require an amendment and/or submittal of a Letter of Map Change (LOMC) shall include but not be limited to the following:

- (a) ~~Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height.~~
- (b) ~~Any change to the floodplain boundaries and/or watercourse alterations on the FIRM.~~
- (c) ~~Any changes to any other officially adopted floodplain maps.~~
- (d) ~~Any floodplain fill that will result in raising the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.~~
- (e) ~~Correction of discrepancies between the water surface profiles and floodplain maps.~~
- (f) ~~Any upgrade to a floodplain zoning ordinance text required by Wis. Adm. Code § NR 116.05 or otherwise required by law or for changes by the municipality.~~
- (g) ~~All channel relocations and changes to maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a flood insurance rate map requires prior approval by FEMA."~~

3. Subsection (8) entitled "Amendments to Floodplain Regulations or Maps" of Section 28.182 entitled "Text and Map Amendments" of the Madison General Ordinances is repealed.

4. Subsection (9) entitled "Finalization of Approval" of Section 28.182 entitled "Text and Map Amendments" of the Madison General Ordinances is hereby renumbered to Subsection (8).

5. Subsection (1) entitled "Applicability and Initiation" of Section 28.184 entitled "Variances" of the Madison General Ordinances is amended as follows:

"(1) Applicability and Initiation.

This section applies to any application to the Zoning Board of Appeals for a variance from the terms of this Chapter. In the case of variances to the floodplain, the Zoning Board of Appeals shall follow the variance review procedures and requirements in MGO Ch. 21.25(4).

Any Eligible Applicant (See Sec. 28.181(2)) may file an application for a variance with the Zoning Administrator."

6. Subsection (3) entitled "Notice" of Section 28.184 entitled "Variances" of the Madison General Ordinances is amended as follows:

"(3) Notice.

A variance application requires the following type of notice (see Sec. 28.181(5)):

- (a) Mail. Notice of the required public hearing shall be sent at least five (5) days before the public hearing
- (b) Publication.
- (c) In the case of variances to the ~~floodplain~~ or wetland regulations, notice shall also be sent to the regional office of the Wisconsin Department of Natural Resources at least ten (10) days prior to the required hearing.

7. Subsection (4) entitled "Decision" of Section 28.184 entitled "Variances" of the Madison General Ordinances is amended as follows:

"(4) Decision.

- (a) The Zoning Board of Appeals shall hold a public hearing on each application.
- (b) The Zoning Board of Appeals may approve, conditionally approve, or deny a variance after a public hearing. The Zoning Board of Appeals shall conduct the public hearing after it receives a complete application.
- (c) The concurring vote of a majority of quorum of the Zoning Board of Appeals is required to grant a variance.
- (d) The decision of the Zoning Board of Appeals shall include findings of fact.
- (e) The Zoning Board of Appeals may impose conditions on the use, development or activities subject to the variance. The Zoning Board of Appeals may require the conditions in order to comply with the standards in this section, to mitigate the effect of the variance on other property in the neighborhood, and to better carry out the general intent of this ordinance.
- (f) ~~When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance~~

~~premiums could increase up to twenty-five dollars (\$25) per one hundred dollars (\$100) of coverage. A copy shall be maintained with the variance record.~~

8. Subsection (5) entitled "Approval Standards" of Section 28.184 entitled "Variances" of the Madison General Ordinances is amended as follows:

"(5) Approval Standards.

(a) The Zoning Board of Appeals shall not grant a variance unless it finds that the following conditions are present:

1. There are conditions unique to the property of the applicant that do not apply generally to other properties in the district.
2. The variance is not contrary to the spirit, purpose, and intent of the regulations in the zoning district and is not contrary to the public interest.
3. For a use variance, compliance with the strict letter of the ordinance will result in no reasonable use of the property.
4. For an area variance, compliance with the strict letter of the ordinance would unreasonably prevent use of the property for a permitted purpose or would render compliance with the ordinance unnecessarily burdensome.
5. The alleged difficulty or hardship is created by the terms of the ordinance rather than by a person who has a present interest in the property.
6. The proposed variance shall not create substantial detriment to adjacent property.
7. The proposed variance shall be compatible with the character of the immediate neighborhood.
8. ~~In the floodplain districts, the variance shall not: grant, extend or increase any use prohibited in the zoning district; be granted for a hardship based solely on an economic gain or loss; be granted for a hardship which is self-created; or damage the rights or property values of other persons in the area.~~
9. ~~In floodplain districts, the variance shall not cause an increase in the regional flood elevations or profiles, permit a lower degree of flood protection in the floodplain than the flood elevation, allow any floor, basement or crawlway below the regional flood elevation or allow actions without the required amendments.~~
10. ~~In the floodplain districts, the lot for which the variance is requested, shall be less than one-half (1/2) acre and shall be contiguous to existing structures constructed below the regional flood elevation.~~
11. ~~In floodplain districts, the variance shall not increase costs for rescue and relief efforts.~~

9. Subsection (2) entitled "Duties" of Section 28.202 entitled "Zoning Administrator" of the Madison General Ordinances is amended as follows:

"(2) Duties.

The Zoning Administrator shall enforce this ordinance, and shall exercise the duties listed below to determine compliance with this chapter and to support its enforcement or administrative functions:

- (a) Issue all zoning certificates (See (3) below).
- (b) Issue all certificates of occupancy.
- (c) Approve all site plans.
- (d) Conduct inspections of buildings, structures, and use of land, including damage assessment for floodplain structures per MGO Chapter 21, to determine compliance with this ordinance.
- (e) Maintain permanent and current records of this ordinance, including but not limited to all maps, amendments, conditional uses, variances, appeals, zoning certificates, certificates of occupancy, and applications for approval.
- (f) Provide and maintain public records relative to all matters arising out of this ordinance.
- (g) Receive, file and forward to the City Clerk all applications for amendments to this ordinance.
- (h) Receive, file and forward to the City Plan Commission all applications for conditional uses.
- (i) Receive, file and forward to the Zoning Board of Appeals all applications for appeals, variances or other matters on which the Zoning Board of Appeals is required to act under this ordinance or per MGO Chapter 21.
- (j) Initiate, direct and review, from time to time, a study of this chapter.
- (k) Make recommendations to the City Plan Commission about revisions to this chapter.
- (l) Refer violations of this chapter to the City Attorney for prosecution. Copies of the violation report on floodplain regulations shall be sent to the Southern District office of the Wisconsin Department of Natural Resources pursuant to MGO Chapter 21.
- (m) Review and interpret deed restrictions which were initiated at the request of a City agency in order to relate the restrictions to uses of land authorized in this Zoning Code.
- (n) Provide substantial damage assessment for floodplain structures under MGO Chapter 21.
- (o) Act as the Floodplain Officer pursuant to MGO Chapter 21, and in that capacity the duties may include, but are not limited to, the following:
  - i. Maintain floodplain records, including all permits issued, inspections made, and work approved related to floodplains; documentation of certified lowest floor and regional flood elevations; floodproofing certificates; floodplain maps, and ordinances, all water surface profiles, substantial damage assessment reports, and list of nonconforming structures and uses.
  - ~~(p)~~ ii. Submit copies of applications for amendments, variances and appeals to the floodplain regulations and floodplain maps to the appropriate Regional Office of the Wisconsin Department of Natural Resources, and the Federal Emergency Management Agency.
  - ~~(q)~~ iii. Submit copies of any adopted amendments, any decisions by the Zoning Board of Appeals on appeals and variances to the floodplain regulations

and floodplain maps within ten (10) days of the decision, any case-by-case analyses of proposals in floodplain areas, an annual summary report of the number and types of zoning actions taken and substantial damage assessment reports to the appropriate District Office of the Wisconsin Department of Natural Resources. Decisions by the Zoning Board of Appeals on appeals and variances to the flood plain regulations and flood plain maps shall be signed by the chair of the Zoning Board of Appeals and shall state the basis for the Board's decision, including appropriate facts.

(+) (p) Take other actions that are assigned under other provisions of this chapter.”

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

“(3) Issuance of Zoning Certificates.

- (a) A zoning certificate is required before any permit relating to the use of land, buildings or structures is issued by any officer, department or employee of the City.
- (b) Any permit or certificate of occupancy issued in conflict with this Section is null and void.
- (c) This section does not apply to:
  - 1. Lots without buildings or structures; and
  - 2. Lots used for public recreation purposes.
- (d) The Zoning Administrator shall approve or deny the zoning certificate application. Approval indicates that the proposed use of land, buildings or structures and any future proposed buildings or structures comply with all of the provisions of this chapter.
- (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 and must meet the requirements in MGO Chapter 21. ~~When applicable in floodplain areas, the Zoning Administrator shall require a certification by a registered professional engineer, architect or land surveyor that the 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.”~~

11. Subsection (1) entitled “In General” of Section 28.207 entitled “Penalties” of the Madison General Ordinances is amended 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) 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."~~

12. Section 28.211 entitled "Definitions" of the Madison General Ordinances is amended by repealing therein the following:

A Zones. A Zones are those areas shown on the flood plain zoning maps which would be inundated by the "base flood" or "regional flood" as defined herein. Such areas may be numbered as AO, A1 to A30, A99 or be unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

AH Zone. See "Area of Shallow Flooding."

Area of Shallow Flooding. A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of one to three (1 to 3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood. A flood having a one percent (1%) chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.

Base Flood Elevation. The base flood elevation is that which reflects the height of the base flood as defined above.

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.

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 or tent that is fully licensed, if required, and ready for highway use.

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.

Channel. A change in the use of a property from one land use category to another, or the addition of a new use category to an existing use.

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.

Encroachment. Any fill, building, structure or use (including an accessory use) in the floodway.

Encroachment/Floodway Lines. Encroachment/floodway lines are limits of obstruction to flood flows. These lines are on both sides of and generally parallel to the stream. The lines are established by assuming that the area landward (outside) of the encroachment lines will be ultimately developed in such a way that they will not be available to convey flood flows.

Equal Degree of Hydraulic Encroachment. The effect of any encroachment into the floodway must be computed by assuming an equal degree of hydraulic encroachment on the other side of a river or stream for a significant hydraulic reach. This computation assures that property owners up, down or across the river or stream will have the same rights of hydraulic encroachment. Encroachments are analyzed on the basis of the effect upon hydraulic conveyance, not upon the distance the encroachment extends into the floodway.

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

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 Fringe. That portion of the floodplain between the regional flood limits and the floodway.

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

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.

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 Profile. A graph showing the relationship of the water surface elevation of a flood event to a location along a river that generally is expressed as a distance upstream from a designated point on a stream or river.

Flood Protection Elevation. The flood protection elevation shall correspond to a point two (2) feet of freeboard above the water surface profile associated with the regional flood and the official floodway lines.

Flood Storage. Flood storage means those floodplain areas where storage of floodwaters has been taken into account in reducing the regional flood discharge.

Floodplain. The land adjacent to a body of water which has been or may be hereafter covered by flood water including but not limited to the regional flood; it includes the floodway and flood fringe.

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

Floodproofing. A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures and contents of buildings in a flood hazard area.

Floodway. The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters.

Freeboard. Freeboard is a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.

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.

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.

Lowest Adjacent Grade. For purposes of floodplain regulations, the elevation of the lowest ground surface that touches any of the exterior walls of a building.

Lowest Floor. For purposes of floodplain regulations, 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.

Model. Corrected Effective. A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.

Model. Duplicate Effective. A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

Model. Effective. The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

Model. Existing (Pre-Project). A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

Model. Revised (Post Project). A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.

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.

New Construction. For the purpose of floodplain regulation only, means structures for which the start of construction commenced on or after the effective date of the floodplain zoning maps adopted and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the start of construction commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later and includes any subsequent improvements to such structures.

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.

Official Letter of Map Amendment. A notification from the Federal Insurance Administration of the U. S. Federal Emergency Management Agency that a Flood Hazard Boundary Map or Flood Insurance Study Map has been amended.

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.

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

Recurrence Interval. The average interval of time, based on a statistical analysis of actual or representative stream flow records, which can be expected to elapse between floods equal to or greater than a specified stage or discharge. Recurrence interval is generally expressed in years.

Storage Capacity of a Floodplain. The storage capacity of a flood plain is the volume of space above an area of flood plain land that can be occupied by flood water of a given stage at a given time, regardless of whether the water is moving.

Substantial Damage. For the purpose of floodplain management only, means damage of any original sustained by a structure, whereby the costs of restoring the structure to its predamaged condition would equal or exceed fifty percent (50%) of the equivalent assessed value of the structure before the damage occurred.

Substantial Improvement. or the purposes of floodplain regulations, any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds fifty percent (50%) of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantial Modification of a Mobile Service Support Structure. The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following, except that an activity is not a substantial alteration if a greater height is necessary to avoid interference with an existing antenna, or if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable:

- (a) For structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet.
- (b) For structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by ten (10) percent or more.
- (c) Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by twenty (20) feet or more, unless a larger area is necessary for collocation.
- (d) Increases the square footage of an existing equipment compound to a total area of more than two thousand five hundred (2,500) square feet.

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, b

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.

EDITOR'S NOTE:

Subsection (8) entitled "Amendments to Floodplain Regulations or Maps" of Section 28.182 entitled "Text and Map Amendments" of the Madison General Ordinances currently reads as follows:

"(8) Amendments to Floodplain Regulations or Maps.

No amendment to floodplain regulations, either text or map, shall become effective until approved by the Wisconsin Department of Natural Resources and the Federal Emergency Management Agency.

In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles. Any such alterations must be reviewed and approved by FEMA and the DNR.

In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles."