

Legistar File No. 90214 Body

DRAFTER'S ANALYSIS: This City Attorney Revisor's Ordinance corrects certain parts of the Madison General Ordinances (MGO), the City's code of ordinances.

The proposed changes in this ordinance are as follows:

- Section 2.37(6)(b) is amended to fix a grammatical error.
- Section 7.10(4) is amended to fix a grammatical error.
- Sections 21.20 is amended to fix a numbering issue.
- Sections 28.121-28.125 are repealed, as they have been previously moved to Chapter 21.
- Section 29.09(3)(b) is amended to fix a State Agency title.
- Section 32.04(12) is amended to fix a grammatical error.
- Section 38.12 is repealed following the Section sunset date in 2015.

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

1. Subdivision (b) of Subsection (6) entitled "Deliberations" of Section 2.37 entitled "Removal Hearings" of the Madison General Ordinances is amended as follows:

"(b) The hearing examiner shall recognize alders to speak on the question of removal in the order they enter the queue. Each alder may speak once for up to six minutes on the question ~~and~~ of removal. Discussion and debate shall be limited to the testimony and evidence presented at the hearing and the standards for removal. The hearing examiner may explain the legal standards related to removal and review the required process, and shall rule on any questions of whether statements made in deliberations are in order."

2. Subsection (4) of Section 7.10 entitled "Fugitive Dust" of the Madison General Ordinances is amended as follows:

"(4) Any person who violates this section for a first offense may be subject to a forfeiture of not less than fifty dollars (\$50) ~~æ~~ nor more than two thousand dollars (\$2000), any person who violates this section for a second offense may be subject to a forfeiture of not less than two hundred and fifty dollars (\$250) ~~æ~~ nor more than two thousand dollars (\$2000), any person who violates this section for a third and subsequent offense may be subject to a forfeiture of not less than five hundred dollars (\$500) ~~æ~~ nor more than two thousand dollars (\$2000). Each day of violation shall constitute a separate offense."

3. Section 21.20 entitled "Floodway District" of the Madison General Ordinances is renumbered to 21.205. The Office of the City Attorney is authorized to amend the section number where referenced elsewhere in the Ordinances.

"~~21.20~~ 205 FLOODWAY DISTRICT."

4. Section 28.121 entitled "Floodplain Overlay District" of the Madison General Ordinances is repealed.

5. Section 28.122 entitled "F1 Floodway District" of the Madison General Ordinances is repealed.

6. Section 28.123 entitled "F2 Flood Fringe District" of the Madison General Ordinances is repealed.

7. Section 28.124 entitled "F3 General Floodplain District" of the Madison General Ordinances is repealed.

8. Section 28.125 entitled "F4 Flood Storage District" of the Madison General Ordinances is repealed.

9. Paragraph 1 of Subdivision (b) entitled "Plan Review Fees" of Subsection (3) entitled "Fee Schedule" of Section 29.09 entitled "Fee Schedule" of the Madison General Ordinances is amended as follows:

"1. State Seal fee as charged by Department of Safety and ~~Special~~ Professional Services (DSPS)."

10. Subsection (12) entitled "Severability" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended as follows:

"(12) Severability. In the event that any section of this Ordinance shall be declared or judged by a court of competent jurisdiction to be ~~in-valid~~ invalid or unconstitutional, such adjudication shall in no manner affect the other sections of this Ordinance, which shall be in full force and effect as if the said section or said sections were not originally a part thereof. In addition, should enforcement of these ordinance provisions relating to rent abatement be temporarily or permanently stayed in whole or in part by judicial order or should any of said sections of this Ordinance be declared or judged invalid or unconstitutional by a court, the provisions of Sec. 32.06 of the Madison General Ordinances, entitled Rent Withholding, in force and effect on October 20, 1986, which relate to rent withholding procedures shall be immediately reinstated without further action by the Common Council."

11. Section 38.12 entitled "Habitually Intoxicated Persons" of the Madison General Ordinances is repealed.

Section 28.121 entitled "Floodplain Overlay District" of the Madison General Ordinances currently reads as follows:

"28.121 FLOODPLAIN OVERLAY DISTRICTS.

(1) Statement of Purpose.

Pursuant to Wis. Stat. § 62.23(7), this ordinance is intended to regulate floodplain development to:

- (a) Protect life, health, and property.
- (b) Minimize expenditures of public funds for flood control projects.
- (c) Minimize rescue and relief efforts undertaken at the expense of the taxpayers.
- (d) Minimize business interruptions and other economic disruptions.
- (e) Minimize damages to public facilities in the floodplains.
- (f) Minimize the occurrence of future flood blight areas in the floodplain.
- (g) Discourage the victimization of unwary land and homebuyers.
- (h) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (i) Discourage development in the floodplain if there is any practicable alternative to locate the activity, use, or structure outside the floodplain.

(2) Areas to be Regulated.

This Subchapter regulates all areas that could be covered by the regional flood or base flood as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO zones. Regional Flood Elevations (RFE) may be derived from other studies. If more than one map or revision is referenced, the most restrictive information shall apply.

(3) Establishment of Floodplain Zoning Districts.

The regional floodplain area is divided into four (4) districts as follows:

- (a) The F1 Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE zones as shown on the FIRM.
- (b) The F2 Flood Fringe District (FF) is that portion between the regional flood limits and the floodway and displayed as AE zones on the FIRM.
- (c) The F3 General Floodplain District (GFP) consists of those areas that may be covered by floodwater during the regional flood.
- (d) The F4 Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

(4) Floodplain Maps.

See Sec. 28.022(3), Zoning Districts and Maps, for listing of floodplain maps and determination of floodplain boundaries.

(5) Removal of Lands From Floodplain.

Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two (2) feet above the regional or base flood elevation; the fill is contiguous to land outside the floodplain, and the map is amended using the procedures established for zoning map amendments in Sec. 28.182.

(6) Warning and Disclaimer of Liability.

The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by person-made or natural causes. This ordinance does not imply or guarantee that non-

floodplain areas or permitted floodplain use areas will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the City of Madison or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(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, causing any increase in the regional flood height; or
 - 2. Cause any increase in the regional flood height due to floodplain storage area lost.
- (b) Obstructions or increases greater than 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 cause any increase in the regional flood heights based on the adopted Flood Insurance Rate Map or other adopted map, unless amendments are made using the procedures established for zoning map amendments in Sec. 28.182.
- (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 and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with flood-resistant materials; be constructed to minimize flood damages; and to ensure that utility and mechanical is designed and/or located so as to prevent water from entering or accumulating within the equipment 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.

(8) Watercourse Alterations.

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the Zoning Administrator has notified in writing all adjacent municipalities, the Southern District Office of the DNR and the appropriate office of FEMA and required the applicant to secure all necessary state and federal permits. The standards of sub. (7) must be met and the flood-carrying capacity of any altered or relocated watercourse shall be maintained. As soon as practicable, but not later than six months after the date of the watercourse alteration or relocation, and pursuant to Sec. 28.182, the City shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

(9) Development Under Wis. Stat. chs. 30 and 31.

Development which requires a permit from the Department of Natural Resources, under Wis. Stat. chs. 30 and 31, such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed provided the necessary local permits are obtained and necessary amendments are made to the floodplain zoning ordinance are made according to Sec. 28.182.

(10) Nonconforming Uses.

The existing lawful use of a structure or its accessory use that is not in conformity with the provisions of this ordinance may continue subject to the conditions set forth in Sec. 28.126(2).

(11) Compliance Required.

Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Wis. Stat. § 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when Wis. Stat. § 30.2022 applies.

(12) Floodproofing.

(a) To withstand flood velocities, forces, and other factors associated with the regional flood, floodproofing measures shall be designed that will protect the structure or development to the flood protection elevation and such measures shall either be certified by a registered professional engineer or architect, or meet or exceed the following standards:

1. A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
2. The bottom of all openings shall be no higher than one foot above grade; and
3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(b) All flood-proofing measures shall be designed to:

1. Withstand floor pressures, depths, velocities, uplift and impact forces and other regional flood factors.
2. Protect structures to the flood protection elevation.
3. Anchor structures to foundations to resist flotation and lateral movement; and
4. Minimize or eliminate infiltration of flood waters; and
5. Minimize or eliminate discharges into flood waters.

(c) Flood-proofing measures may include the following:

1. Installation of watertight doors, bulkheads and shutters.
2. Reinforcement of walls and floors to resist rupture or collapse caused by water pressure or floating debris.
3. Use of paints, membranes or mortars to reduce seepage of water through walls.
4. Addition of mass or weight to structures to prevent flotation.
5. Placement of essential utilities above the flood protection elevation.
6. Installation of pumping facilities and/or subsurface drainage systems to relieve foundation wall and basement floor pressures and to lower water levels in structures.
7. Construction of water supply wells and waste treatment systems to prevent the entry of flood waters.
8. Installation of cutoff valves on sewer lines or the elimination of gravity basement drains.

(13) Public or Private Campgrounds.

Public or private campgrounds shall have low flood damage potential and shall meet the following provisions:

- (a) The campground is approved by the Department of Health Services;
 - (b) A land use permit for the campground is issued by the zoning administrator;
 - (c) The campground elevation in relation to the river system is such that a seventy-two (72) hour warning of an impending flood can be given to all campground occupants;
 - (d) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;
 - (e) This agreement shall be for no more than one (1) calendar year, at which time the agreement shall be reviewed and updated by the officials identified in sub. d to remain in compliance with all applicable regulations, including those of the state Department of Health Services and all other applicable regulations;
 - (f) Only camping units that are fully licensed, if required, and ready for highway use are allowed;
 - (g) The camping units shall not occupy any site in the campground for more than one hundred-eighty (180) consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of twenty-four (24) hours;
 - (h) All camping units that remain on site for more than thirty (30) days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed one hundred-eighty (180) days and shall ensure compliance with all the provisions of this section;
 - (i) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;
 - (j) All camping units that remain in place for more than one hundred-eighty (180) consecutive days must meet the applicable requirements in either Secs. 28.122, 28.123 or 28.124 for the floodplain district in which the structure is located;
 - (k) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued and;
 - (l) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.
- (14) Application Requirements for Permits and Zoning Certificates.
- (a) Site Development Plan. Within the Floodplain Districts, all permit applications shall include a site development plan drawn to scale and containing the following information:
 - 1. Name and address of the applicant, property owner, and contractor.
 - 2. Legal description, proposed use, and whether the development is new construction or a modification.
 - 3. Location, dimensions, area and elevation of the lot.
 - 4. Location of the ordinary high-water mark of any abutting navigable waterways.
 - 5. Location of any structures with distances measured from the lot lines and center line of all abutting streets highways.

6. Location of any existing or proposed on-site sewage systems or private water supply systems.
7. Location and elevation of existing or future access roads.
8. Location of floodplain and floodway limits on the property as determined from the official floodplain zoning maps.
9. The elevation of the lowest floor of proposed buildings and any fill using North American Vertical Datum (NAVD).
10. Data sufficient to determine the regional flood elevation in NAVD at the location of the development and to determine whether or not the requirements of the Floodway District or the Flood Fringe District apply.
11. Data sufficient to determine if the proposed development will cause either an obstruction to flow or an increase in regional flood height or discharge according to Sec. 28.121(7). This may include any of the information noted in Sec. 28.122(3).

(b) Hydraulic and Hydrologic Studies to Analyze Developments. All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department

1. Zone A Floodplains.

a. Hydrology.

- i. The appropriate method shall be based on the standards in Wis. Admin. Code ch. NR 116.07(3), *Hydrologic Analysis: Determination of Regional Flood Discharge.*

b. Hydraulic Modeling.

The regional flood elevation shall be based on the standards in Wis. Admin. Code ch. NR 116.07(4), *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

- i. Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
- ii. Channel sections must be surveyed.
- iii. Minimum four (4) foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
- iv. A maximum distance of five hundred (500) feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
- v. The most current version of HEC-RAS shall be used.
- vi. A survey of bridge and culvert openings and the top of road is required at each structure.
- vii. Additional cross sections are required at the downstream and upstream limits of the proposed development and any

necessary intermediate locations based on the length of the reach if greater than five hundred (500) feet.

- viii. Standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.
- ix. The model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

c. 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.

- i. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
- ii. If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

2. Zone AE Floodplains.

a. Hydrology.

If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.

- b. Hydraulic Model. The regional flood elevation shall be based on the standards in Wis. Admin. Code ch. NR 116.07(4), *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

i. Duplicate Effective Model.

The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations

shown in the Floodway Data Table in the FIS report to within 0.1 foot.

ii. Corrected Effective Model.

The Corrected Effective Model shall not include any person-made physical changes since the effective model date, but shall import the model into the most current version of HEC-RAS for Department review.

iii. Existing (Pre-Project Conditions) Model.

The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.

iv. Revised (Post-Project Conditions) Model.

The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.

v. All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.

vi. Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and top widths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.

c. Mapping.

Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:

- i. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
- ii. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
- iii. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
- iv. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator

- (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.
- v. The revised floodplain boundaries shall tie into the effective floodplain boundaries.
 - vi. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.
 - vii. Both the current and proposed floodways shall be shown on the map.
 - viii. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

Section 28.122 entitled “F1 Floodway District” of the Madison General Ordinances currently reads as follows:

“28.122 F1 FLOODWAY DISTRICT.

(1) Applicability.

The provisions of this section shall apply to all floodway areas on the floodplain zoning maps and to those portions of the F3 General Floodplain District determined to be in the floodway area.

(2) Permitted Uses.

The following open space uses are permitted in the F1 Floodway District:

- (a) Agricultural uses, including general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, and wild crop harvesting.
- (b) Nonstructural industrial and commercial uses, including parking and loading areas and airport landing strips.
- (c) Nonstructural recreational uses, including golf course, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting trap and skeet activities, hunting and fishing areas, and hiking and horseback riding trails.
- (d) Uses or structures accessory to open space uses or classified as historic structures.
- (e) Public utilities, streets, and bridges.
- (f) Extraction or deposition of sand, gravel or other materials.
- (g) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply within Wis. Stats. chs. 30 and 31.

(3) Standards for Developments in Floodway.

(a) General.

- 1. Any development in the floodway shall comply with the provisions of Section 28.121(7) and have a low flood damage potential.
- 2. Applicants shall provide the following data for the Zoning Administrator to determine the effects of the proposal according to Sec. 28.121(7)(a) and (b):

- a. A cross-section elevation view of the proposal, perpendicular to the watercourse, indicating whether the proposed development will obstruct flow; or
 - b. An analysis calculating the effects of this proposal on regional flood height.
 3. The Zoning Administrator shall deny the permit application if the project will cause any increase in the flood elevations upstream or downstream based on the data submitted for Subparagraph 2.b. above.
- (b) Structures. Structures accessory to permitted open space uses, classified as historical areas, or functionally dependent on a waterfront location, may be allowed by permit, providing the structures meet all of the following criteria:
 1. Not designed for human habitation and do not have a high flood damage potential and is constructed to minimize flood damage;
 2. Shall have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, at the bottom of all such openings being no higher than one foot above grade. The openings shall be equipped with screens, louvers, or other coverings or other devices provided they permit the automatic entry and exit of floodwaters;
 3. Must be anchored to resist flotation, collapse, and lateral movement; and
 4. Mechanical and utility equipment must be elevated or flood proofed to or above the flood protection elevation.
- (c) Public Utilities, Streets, and Bridges. Public utilities, streets and bridges may be allowed by permit, provided that:
 1. Adequate flood-proofing measures are provided to the flood protection elevation; and
 2. Construction meets the standards in Sec. 28.121(7)(a) and (b).
- (d) Fills or Deposition of Materials.

Fills or deposition of materials may be allowed by permit, provided that:

 1. The requirements of Sec. 28.121(7)(a) and (b) are met.
 2. No material is deposited in navigable waters unless a permit has been granted by the Department of Natural Resources pursuant to Wis. Stat. ch. 30, and a permit pursuant to 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met.
 3. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion; and
 4. The fill is not classified as a solid or hazardous material.
- (4) Prohibited Uses.

All uses not listed as permitted uses in sub. (2) above are prohibited within the floodway district and in the floodway portion of the general floodplain district including the following uses:

 - (a) The storage of any material that is buoyant, flammable, explosive, or injurious to property, water quality, or human, animal, plant, fish or other aquatic life.
 - (b) Any uses not in harmony with or which may be detrimental to uses permitted in the adjoining districts.

- (c) All private or public sewage systems, except portable latrines that are removed prior to flooding, and systems associated with public recreational areas and Wisconsin Department of Natural Resources approved campgrounds, that meet the applicable provisions of Wis. Admin. Code ch. SPS 383.
- (d) All public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and Wis. Admin. Code chs. NR 811 and NR 812.
- (e) All solid and hazardous waste disposal sites.
- (f) All wastewater treatment ponds or facilities, except those permitted under Wis. Admin. Code § NR 110.15(3)(b).
- (g) All sanitary sewer or water lines except those to service existing or proposed development located outside the floodway which complies with the regulation for the floodplain area occupied.
- (h) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses.

Section 28.123 entitled "F2 Flood Fringe District" of the Madison General Ordinances currently reads as follows:

"28.123 F2 FLOOD FRINGE DISTRICT.

(1) Applicability.

The provisions of this section shall apply to all areas within the F2 Flood Fringe District and to those portions of the F3 General Floodplain District determined to be in the flood fringe area. The F2 Flood Fringe District shall also include the A-zones so designated on the floodplain zoning district maps and for which floodways are delineated and mapped.

(2) Permitted Uses.

The following uses are permitted in the F2 Flood Fringe District and to those portions of the F3 General Floodplain District determined to be in the flood fringe area: Any building, structure or use otherwise allowed as permitted or conditional uses in the underlying primary zoning district, except for mobile home parks and solid waste disposal sites.

(3) Standards for Development in Flood Fringe.

All of the provisions of Sec. 28.121(7)(a) and (b) shall apply in addition to the following requirements according to the use requested. Any existing structure in the flood fringe must meet the requirements of Sec. 28.126.

- (a) Residential Uses. Any structure or building used for human habitation, including a manufactured home, which is to be erected, newly-constructed, reconstructed, altered, or moved into the flood fringe area shall meet or exceed the following standards. Any existing structure in the flood fringe must meet the requirements of Sec. 28.126.

- 1. The elevation of the lowest floor shall be placed on fill at or above the flood protection elevation (which is a point two feet above the regional flood elevation) except where Subparagraph 2. below is applicable. The fill elevation shall be one foot or more above the regional flood elevation extending at least fifteen (15) feet beyond the limits of the structure. The DNR may authorize other flood-proofing measures where existing streets or sewer lines are at elevations which make compliance impractical, provided the Board of Appeals grants a variance due to dimensional restrictions.

2. The basement or crawlway floor may be placed at the regional flood elevation provided it is flood-proofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.
 3. Contiguous dry land access, as a vehicle access route above regional flood elevation, shall be provided from a structure or building to land which is outside of the floodplain except as provided in sub. 4.
 4. In developments where existing street or sewer line elevations make compliance with sub. 3 impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation, if:
 - a. The municipality has written assurance from police, fire, and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
 - b. The municipality has a DNR-approved emergency evacuation plan.
- (b) Accessory Structures or Uses.
Accessory structures shall be constructed on fill with the lowest floor at or above the Regional Flood Elevation.
- (c) Commercial Uses. Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe shall meet the requirements for residential uses above. Storage yards, surface parking lots and such uses may be at lower elevations, subject to the requirements of subparagraph e. below provided an adequate warning system exists to protect life and property.
- (d) Manufacturing and Industrial Uses. Any manufacturing or industrial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in Sec. 28.121(12). Subject to the requirements in subparagraph (e) below, storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.
- (e) Storage or Processing of Materials. The storage or processing of materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be stored at or above the flood protection elevation for the particular area or flood-proofed. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.
- (f) Public Utilities, Streets and Bridges. All utilities, streets and bridges shall be designed to be compatible with the local comprehensive floodplain development plans and:
1. When failure or interruption of public utilities, streets and bridges would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, construction or repair of such facilities shall only be permitted if they are designed to comply with Sec. 28.121(12).
 2. Minor roads or nonessential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.

- (g) Sewage Systems. All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, flood-proofed pursuant to Sec. 28.121(12) to the flood protection elevation and shall meet the applicable provisions of all local ordinances and Wis. Adm. Code ch. SPS 383.
- (h) Wells. All public or private wells shall be designed to minimize or eliminate infiltration of flood water into the system, flood-proofed pursuant to Sec. 28.121(12) and shall meet the applicable provisions of Wis. Adm. Code chs. NR 811 and 812.
- (i) Solid Waste Disposal Sites. Disposal of solid or hazardous waste is prohibited in flood fringe areas.
- (j) Deposition of Materials. Any deposited material must meet all the provisions of this ordinance.
- (k) Manufactured Homes.
 - 1. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an excavation plan, indicating vehicular access and escape routes, with local emergency management authorities.
 - 2. In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - a. Have the lowest floor elevated to the flood protection elevation; and
 - b. Be anchored so they do not float, collapse or move laterally during a flood.
 - 3. Outside of existing manufactured home parks, including manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the requirements for residential uses in para. (3)(a) above.
- (l) Mobile Recreational Vehicles.

All mobile recreational vehicles that are on site for one hundred-eighty (180) consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in (k)2. and 3. above. A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.”

Section 28.124 entitled “F3 General Floodplain District” of the Madison General Ordinances currently reads as follows:

“28.124 F3 GENERAL FLOODPLAIN DISTRICT.

- (1) Applicability.

The F3 General Floodplain District consists of the land which has been or may be hereafter covered by flood water during the regional flood and encompasses both the F1 Floodway and F2 Flood Fringe Districts. The provisions of this district shall apply to all floodplains mapped as A, AO or AH zones.
- (2) Permitted Uses.

The following uses are permitted in the F3 General Flood Plain District, provided a determination shall be made as to what portion of the floodplain is within the floodway or flood fringe as provided in Sec. 28.124(4):

- (a) Uses permitted in the F1 Floodway District are permitted in that portion determined to be within the floodway.
- (b) Uses permitted in the F2 Flood Fringe District are permitted in that portion determined to be within the flood fringe.

(3) Standards for Development.

Once it is determined according to Subdivision (4) below that a proposed use is located within a floodway, the provisions of Subsection 28.122 above shall apply. Once determined that the proposed use is located within the flood fringe, the provisions of Subsection 28.123 above shall apply. The rest of this subchapter applies to either district.

- (a) In AO/AH zones the structure's lowest floor must meet one of the conditions listed below whichever is higher:
 - 1. At or above the flood protection elevation; or
 - 2. Two (2) feet above the highest adjacent grade around the structure; or
 - 3. The depth as shown on the FIRM.
- (b) In AO/AH zones, provide plans showing adequate drainage paths to guide floodwaters around structures.

(4) Determining Floodway and Flood Fringe.

Upon receiving an application for development within the general floodplain district, the Zoning Administrator shall:

- (a) Require the applicant to submit, at the time of application, two (2) copies of an aerial photograph, or a plan which accurately locates the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, together with all pertinent information such as the nature of the proposal, legal description of the property, fill limits and elevations, building floor elevations and flood-proofing measures, and the flood zone as shown on the FIRM.
- (b) Require the applicant to furnish any of the following additional information as is deemed necessary by the DNR for evaluation of the effects of the proposal upon flood height and flood flows, regional flood elevation, and to determine the boundaries of the floodway:
 - 1. A hydrologic and hydraulic study as specified in Sec. 28.121(14)(b).
 - 2. Plan (surface view) showing: elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information.
 - 3. Specifications for building construction and materials, flood-proofing, filling, dredging, channel improvement, storage of materials, water supply and sanitary facilities."

Section 28.125 entitled "F4 Flood Storage District" of the Madison General Ordinances currently reads as follows:

"28.125 F4 FLOOD STORAGE DISTRICT.

(1) Applicability.

The F4 Flood Storage District consists of that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity, which would cause higher floodplain elevations. The provisions of this section shall apply to all areas within the F4 Flood Storage District as shown on the Dane County Flood Storage Maps.

(2) Standards for Development in Flood Storage District.

In addition to the Standards for development in Sec. 28.123(3), the following standards shall apply.

- (a) Development in a flood storage district shall not cause an increase greater than 0.00 of a foot in the height of the regional flood.
- (b) No development shall be allowed that would remove flood storage volume, unless an equal volume of storage, as defined by the predevelopment ground surface and the regional flood elevation, shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.
- (c) No area in the floodplain may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside the floodplain.
- (d) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district is rezoned to the flood fringe district. At such time, the floodplain study and map for the waterway shall be revised to revert to the higher regional flood discharge calculated without floodplain storage.

(3) Permitted Uses.

Any use allowed as permitted or conditional uses in the Madison Zoning Ordinance, except for mobile home parks and solid waste disposal sites.

Section 38.12 entitled "Habitually Intoxicated Persons" of the Madison General Ordinances currently reads as follows:

"38.12 HABITUALLY INTOXICATED PERSONS.

- (1) Declaration of Policy. Wis. Stat. § 125.12(2)3. provides procedures for the suspension, revocation or nonrenewal of a retail alcohol beverage license, when the licensee "has sold or given away alcohol beverages to known habitual drunkards." A person who is habitually intoxicated may lack self-control as to the use of alcohol beverages and use such beverages to the extent that their health is substantially impaired or endangered and their social or economic functioning is substantially disrupted. Such conduct is dangerous to the individual and to others. It is in the interest of the health, welfare and safety of the residents of the City of Madison to prohibit the harmful conduct of habitually intoxicated persons, and it is a reasonable exercise of the City's police powers to enforce those provisions of state law that prohibit a retailer from selling alcohol beverages to these habitually intoxicated persons.
- (2) Definition of a Known Habitually Intoxicated Person. A Known Habitually Intoxicated Person is a person who, within the past one hundred eighty (180) days:

- (a) Has been convicted of six (6) or more civil or criminal offenses, in which the police reports or other evidence indicate that the police officer who made the arrest determined, based upon the training and experience of the officer, that the person was under the influence of alcohol at the time of the commission of the offense, or
 - (b) Has been transported and admitted six (6) or more times to an approved public treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment, or
 - (c) Has been subject to any combination of arrests and convictions under sub. (1) and admissions to an approved public alcohol treatment facility under sub. (2), that equals or exceeds six (6) times.
 - (d) Where a person from the same incident has been both convicted of a civil or criminal offense, as defined in sub. a., and has been admitted to an approved public alcohol treatment facility under sub. b., both the arrest and the admission may be counted separately for the calculation provided in sub c.
 - (e) A person may voluntarily request that their name be added to the list of Known Habitually Intoxicated Persons. Such a request shall be made in writing and shall be submitted to the Madison Police Department.
- (3) Maintenance of List.
- (a) The Madison Police Department shall maintain a list of Known Habitually Intoxicated Persons and shall, in its judgment, determine the format and content of the list. The Department shall periodically review the format of the list. Whenever the Department determines that a person meets the definition of a Known Habitually Intoxicated Person, as provided in sub. (2), the Department shall cause the name of that person to be placed on said list, as provided in this Section, along with a photograph of the person, which reasonably represents the likeness of the person.
 - (b) Petition for Removal. If one hundred and eighty (180) days have passed from the time the name of a person has been placed on the list, and the person has not either been convicted of an offense under sub. (2)(a), or has not been admitted to an approved public alcohol treatment facility during that one hundred eighty (180) day period, that person may petition the Madison Police Department to remove their name from the list, pursuant to this Section, by filing a written request with the City Clerk, stating that they qualify for removal from the list. Upon verification that within the past one hundred eighty (180) days the person has not either been convicted of an offense under sub. (2)(a), or has not been admitted to an approved public alcohol treatment facility during that one hundred eighty (180) day period, the Madison Police Department shall remove the name of the person from the list.
 - (c) Removal by Police Department. On or about January 1 of each year, the Madison Police Department shall review the list of Known Habitually Intoxicated Persons and shall remove the names of all persons who during the prior six (6) months, has not been convicted of an offense under sub. (2)(a) and who has not been transmitted to an approved public alcohol treatment facility by the Department.
- (4) Notice. When the Madison Police Department determines that a person meets the definition of a Known Habitually Intoxicated Person, the Department shall provide the person with a written notice, prepared by the Department, that their name will be placed on the list of Known Habitually Intoxicated Persons. The notice shall inform the person of their right to appeal the determination of the Department as provided in sub. (5). The Department shall keep a record of the date and time that the person was provided with such written notice.

(5) Appeals.

- (a) A person who has been informed in writing by the Madison Police Department that their name will be placed on the list of Known Habitually Intoxicated Persons, may appeal the determination of the Department by filing a written objection with the City Clerk within 5 (five) business days of receiving the notice from the Department. The content of an appeal shall be liberally construed so that, as long as the person appealing provides timely written notice that states that they object to being placed on the list of Known Habitually Intoxicated Persons, the appeal shall be deemed to be in proper form.
 - (b) Hearing Examiner. The Chair of the Alcohol License Review Committee, or their designee, shall serve as Hearing Examiner for Appeals under this Section, and shall have the authority to conduct hearings upon the filing of a written objection as provided under sub. (5)(a).
 - (c) Authority of Hearing Examiner. The hearing examiner shall have the authority to administer oaths and shall be responsible for the fair, orderly and impartial conduct of the hearing and the preservation of the exhibits and record therein.
 - (d) Procedure. All proceedings and testimony shall be recorded on tape. A copy of the tape recordings shall be supplied to anyone requesting the same at the requester's expense. If either party requests a stenographic recording and transcription, the hearing examiner shall make the necessary arrangements, but the expense shall be borne by the requesting party.
 - (e) Standard of Proof. In the hearing, the Madison Police Department shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence, i.e. by the preponderance of the evidence, that the person has been convicted of six (6) or more civil or criminal offenses, where the police reports or other evidence indicate that the person was under the influence of alcohol at the time of the commission of the offense; or that the person has been transported and admitted six (6) or more times to an approved public treatment facility under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment; or has been subject to any combination of convictions and admissions that equals or exceeds six (6) times. If after the hearing, the hearing examiner finds that there is not a preponderance of evidence of any combination of six (6) convictions or admissions, as provided in sub. (2), the hearing examiner shall enter an order granting the appeal and the Department shall remove the person's name from the list of Known Habitually Intoxicated Persons. If after the hearing, the hearing examiner finds that there is a preponderance of the evidence that the person has been subject to any combination of six (6) or more convictions or admissions, the hearing examiner shall deny the appeal and the Department shall retain the person's name on the list of Known Habitually Intoxicated Persons.
 - (f) Finality of Appeal. All orders of the Hearing Examiner shall be final administrative determinations and shall be subject to review in court as by law may be provided. Any party to the proceeding may seek review thereof within thirty (30) days of service by mail of the final determination of the Hearing Examiner. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding before the Hearing Examiner, with said notice to be sent by first class mail to each party's last known address. The institution of the proceeding for judicial review shall not stay the decision and order of the Hearing Examiner; however, the reviewing court may order a stay upon such terms as it deems proper.
- (6) Distribution of List. The Alcohol Policy Administrator shall distribute the list of Known Habitually Intoxicated Persons to each retail Class "A" or "Class A" alcohol beverage licensee in the City on a semi-annual basis. If the position of Alcohol Policy Administrator

is vacant, the Mayor shall designate a member of the Mayor's staff to distribute the list under this subsection.

- (7) Retailers Prohibited. It shall be unlawful for any Class "A" or "Class A" retail establishment or any person employed by a Class "A" or "Class A" retail establishment, to sell, dispense or give away alcohol beverages to a person whose name and photograph appears on the list of Known Habitually Intoxicated Persons. If the Alcohol Policy Administrator has provided a copy of the most current list to the licensee, at the address of the licensee as listed by the Madison City Clerk, it shall not be a defense that the licensee did not have a copy of the most current list.
 - (a) If a licensee has no prior convictions for violations of sub (7), and has not previously received a warning, the Madison Police Department shall formally warn the licensee that any future violations will result in issuance of a citation. The Madison Police Department shall be responsible for maintaining a list of those licensees who have received warnings under this subsection.
- (8) Nothing in this section shall be construed to limit a licensee's or permittee's duties under Sec. 38.04(1), MGO.
- (9) Review. The Alcohol License Review Committee shall annually review Section 32.12 to determine the efficacy of the Section in deterring alcohol consumption by habitually intoxicated persons.
- (10) Sunset. Section 32.12 shall expire on July 13, 2015, unless extended by the Common Council prior to the expiration date."