

CHAPTER 18

SHORELAND-WETLAND AND FLOOD PLAIN ZONING CODE

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18.01 GENERAL PROVISIONS.

(1) STATUTORY AUTHORIZATION. This chapter is adopted pursuant to the authorization in ' ' 62.23, 62.231, 87.30 and 144.26, Wis. Stats.

(2) FINDINGS OF FACT. Uncontrolled use of the shoreland-wetlands, flood plains, rivers and streams, and the pollution of the navigable waters of the City would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The Wisconsin Legislature has delegated responsibility to all municipalities to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and preserve shore cover and natural beauty.

(3) PURPOSE. To promote the public health, safety, convenience and general welfare, and protect life, health and property, this chapter has been established to:

- (a) Maintain the storm and flood water storage capacity of wetlands.
- (b) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters.
- (c) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat.
- (d) Prohibit certain uses detrimental to the shoreland-wetland area.
- (e) Preserve shore cover and natural beauty by restricting shoreland-wetland excavation, filling and other earth-moving activities.
- (f) Minimize expenditures of public monies for costly flood control projects.
- (g) Reduce rescue and relief efforts, generally undertaken at the expense of the tax paying public.
- (h) Prevent business interruptions which usually result in the loss of local incomes.
- (i) Reduce damage to public facilities such as utilities, municipal buildings, streets and bridges which may be located in the flood plains.
- (j) Prevent the occurrence of future flood blight areas on flood plains.
- (k) Discourage the victimization of unwary land and home buyers.
- (l) Prevent increases in regional flood heights which could increase damage during floods and which may result in conflicts or litigation between property owners.

(4) TITLE. This chapter shall be known as the Shoreland-Wetland and Flood Plain Zoning Code for the City of Clintonville, Wisconsin.

(5) COMPLIANCE; OTHER PERMITS. Any development, as defined in sec. 18.02 of this chapter, in flood plains and shoreland-wetlands shall be in full compliance with the terms of this chapter. It is the responsibility of the applicant to secure all other necessary permits from appropriate Federal, State and local agencies, including those required by the U.S. Army Corps of Engineers under Sec. 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

(6) MUNICIPALITIES AND STATE AGENCIES REGULATED. Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this chapter and obtain all necessary permits.

State agencies are required to comply if ' 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when ' 30.12(4)(a), Wis. Stats., applies.

(7) ABROGATION AND GREATER RESTRICTIONS.

(a) This chapter supersedes all the provisions of any municipal zoning ordinance enacted under ' 62.23, Wis. Stats., for cities or ' 61.35, Wis. Stats., for Villages or ' 87.30, Wis. Stats., which relate to flood plains and shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than the provisions contained in this chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise. The more restrictive of either the shoreland-wetland district or the flood plain district regulations shall apply when a property is located in both zoning districts.

(b) This chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

(8) INTERPRETATION. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this chapter is required by a standard in Wis. Adm. Code NR116 or NR117, and where the chapter provision is unclear, the provision shall be interpreted in light of the Wis. Adm. Code NR116 or NR117 standards in effect on the date of the adoption of this chapter or in effect on the date of the most recent text amendment to this chapter.

(9) WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection provided by this chapter is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. Larger floods may occur or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings restricted by debris. Therefore, this chapter does not imply that areas outside of the delineated flood plain or permitted land uses within the flood plain will be totally free from flooding and associated flood damages; nor does this chapter create liability on the part of, or a cause of action against, the City or any officer or employee thereof for any flood damage that may result from reliance on this chapter.

(10) ZONING MAPS. The maps designated below are hereby adopted and made part of this chapter. They are on file in the office of the Clerk-Treasurer.

(a) United States Geological Survey Quadrangle Maps revised and dated 1969 and 1970.

(b) Wisconsin Wetland Inventory Maps stamped "FINAL" on October 9, 1985.

(c) Zoning maps entitled City of Clintonville Flood Insurance Rate Map (FIRM), National Flood Insurance Program, Community Panel 5504940002B, dated November 16, 1995, including the Flood Insurance Study and corresponding profiles dated November 16, 1995. (Adopted 11-14-95)

(d) Comprehensive Zoning Base Maps titled City of Clintonville and dated October, 1979.

(11) ANNEXED AREAS. The Waupaca County flood plain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the City for all areas annexed by the City until the City adopts and enforces an ordinance which meets the requirements of Wis. Adm. Code NR116. These annexed lands are described on the City's Official Zoning Map. County flood plain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the Zoning Administrator.

18.02 DEFINITIONS. The terms or words used in this chapter shall be interpreted as follows:

(1) A-ZONES. Those areas shows on the City's Official Flood Plain Zoning Map, as defined in sub.

(36) below, which would be inundated by the base flood or "regional flood" as defined herein. These areas may be numbered or 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.

(2) ACCESSORY STRUCTURE OR USE. A detached subordinate structure or a use which is clearly incidental to, and customarily found with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

(3) BOATHOUSE. As defined in '30.121(1), Wis. Stats. means a permanent structure used for the storage of watercraft and associated materials and includes all such structures which are totally enclosed, have roofs or walls or any combination of structural parts.

(4) BULKHEAD LINE. A geographic line along a reach of navigable water that has been specified by adoption of a municipal ordinance and approved by the Department of Natural Resources pursuant to '30.11, Wis. Stats., and which allows limited filling between the bulkhead line and original ordinary high-water mark, except where such filing is prohibited by the floodway provisions of this chapter.

(5) CERTIFICATE OF COMPLIANCE. A certification issued by the Zoning Administrator stating that any construction and use of land or a building, the elevation of fill or the first floor of a structure is in compliance with all of the provisions of this chapter.

(6) CHANNEL. A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

(7) CONDITIONAL USE. A use which is permitted by this chapter provided that certain conditions specified in the chapter are met and that a permit is granted by the Board of Zoning Appeals or, where designated, the Plan Commission.

(8) DEPARTMENT. The Wisconsin Department of Natural Resources.

(9) DEVELOPMENT. Any new use, change of use and any change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; any placement of mobile homes; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials, public or private sewage disposal systems or water supply facilities.

(10) DRAINAGE SYSTEM. One or more artificial ditches, tile drains or similar devices which collect surface runoff or ground water and convey it to a point of discharge.

(11) DRYLAND ACCESS. A vehicular access route which is above the regional flood elevation and which connects land located in the flood plain to land which is outside the flood plain such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

(12) ENCROACHMENT. Any fill, structure, building, use or development in the floodway.

(13) ENVIRONMENTAL CONTROL FACILITY. Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting, or allegedly not meeting, acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

(14) EXISTING MOBILE HOME PARK OR MOBILE HOME SUBDIVISION. A parcel, or contiguous parcels, of land divided into 2 or more mobile home lots for rent or sale on which the construction of facilities for servicing the lots, including, at a minimum, the installation of utilities, either final site grading or the pouring of

concrete pads, and the construction of streets, is completed before the effective date of this chapter.

(15) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). The Federal agency that administers the National Flood Insurance Program.

(16) FIXED HOUSEBOAT. As defined in '30.121(1), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(17) FLOOD OR FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas caused by:

- (a) The overflow or rise of inland waters.
- (b) The rapid accumulation or runoff of surface waters from any source.
- (c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior.
- (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.

(18) FLOOD FRINGE. That portion of the flood plain outside of the floodway which is covered by flood waters during the regional flood; it is generally associated with standing water rather than rapidly flowing water.

(19) FLOOD HAZARD BOUNDARY MAP. A map prepared for the City by FEMA designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. These maps form the basis for both the regulatory and insurance aspects of the National Flood Insurance Program.

(20) FLOOD INSURANCE STUDY. A technical engineering examination, evaluation and determination of flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and regional flood elevations as well as floodway lines. The flood hazard areas are designated as numbered or unnumbered A-Zones. Flood insurance study maps form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

(21) FLOOD PLAIN. That land which has been or may be hereafter covered by flood water during the regional flood. The flood plain is comprised of the floodway and the flood fringe and general flood plain areas.

(22) FLOOD PLAIN ISLAND. A natural geologic land formation within the flood plain that is surrounded, but not covered, by floodwater during the regional flood.

(23) FLOOD PROFILE. A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

(24) FLOODPROOFING. Any combination of structural and nonstructural additions, changes or adjustments which reduce or eliminate flood damage to unimproved or improved real estate, water and sanitary facilities, structures and their contents.

(25) FLOOD PROTECTION ELEVATION. An elevation that corresponds to a point 2 feet of freeboard above the water surface profile associated with the regional flood. See also FREEBOARD.

(26) FLOODWAY. The channel of a river or stream and those portions of the flood plain adjoining the channel required to carry the regional flood discharge.

(27) FLOODWAY ENCROACHMENT LINES. Represent the limits of obstruction of flood flows. These lines are designated on both side of, and generally parallel to, the channel of a river or stream. They are established by assuming that the area landward, or outside of the encroachment liens, will ultimately be developed in such a way that it will not convey flood flows, but the development will not cause an increase to regional flood elevations upstream. It is assumed that any development riverward of these lines will cause an obstruction and will require a detailed analysis to determine its effect on the regional flood elevations upstream.

(28) FREEBOARD. Represents 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 effect of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.

(29) HEARING NOTICE. Publication or posting meeting the requirements of Ch. 985, Wis. Stats. Class 1 notice is required at a minimum for appeals; published once at least one week (7 days) before the hearing. Class 2 notice is required at a minimum for all zoning ordinances and amendments, including map amendments; published twice, once each week consecutively, the last publication at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice exceeding these minimums.

(30) HIGH FLOOD DAMAGE POTENTIAL. Any danger to human life or public health or the potential for any significant economic loss to a structure or its contents.

(31) INCREASE IN REGIONAL FLOOD HEIGHT. A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and proposed conditions which is directly attributable to development in the flood plain, but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

(32) LAND USE. Any nonstructural use made of unimproved or improved real estate. See also DEVELOPMENT.

(33) MOBILE HOME or MANUFACTURED HOME. A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. For the purpose of this chapter, it does not include recreational vehicles or travel trailers.

(34) NAVIGABLE WATERS. Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. The Wisconsin Supreme Court has declared navigable bodies of water with a bed differentiated from adjacent uplands and with levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGayner and Co., Inc. v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]

(35) OBSTRUCTION TO FLOW. Any development which physically blocks the conveyance of flood waters such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.

(36) OFFICIAL FLOOD PLAIN ZONING MAP. That map, adopted and made part of this chapter, as described in sec. 18.01(10) of this chapter, which has been approved by the Department and FEMA.

(37) OPEN SPACE USE. Those uses having a relatively low flood damage potential and not involving structures.

(38) ORDINARY HIGH-WATER MARK. The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

(39) PERSON. An individual, or group of individuals, corporation, partnership, association, municipality or State agency.

(40) PLAN COMMISSION. The City Plan Commission, created under '62.23(1), Wis. Stats., which acts on matters pertaining to planning and zoning.

(41) REGIONAL FLOOD. A flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every 100 years. This means that in any given year, there is a 1% chance that the regional flood may occur or be exceeded. During a typical 30 year mortgage period, the regional flood has a 26% chance of occurrence. The regional flood is based upon a statistical analysis of stream flow records available for the watershed region or both. FEMA uses the term "base flood" which means the regional flood.

(42) SHORELANDS. Lands within the following distances from the ordinary high-water mark of navigable waters; 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

(43) SHORELAND-WETLAND DISTRICT. The zoning district, created in this chapter, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this chapter.

(44) STORAGE CAPACITY OF A FLOOD PLAIN. 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.

(45) UNNECESSARY HARDSHIP. That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards, such as area, setbacks, frontage or height, unnecessarily burdensome or unreasonable in light of the purpose of this chapter. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.

(46) VARIANCE. An authorization granted by the Board of Zoning Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this chapter. a variance may not permit a use of property that is otherwise prohibited by this chapter, or allow construction not protected to the flood protection elevation.

(47) WATER SURFACE PROFILE. A graphic representation showing the elevation of the water surface of a watercourse for each position along a river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating flood plain areas.

(48) WETLANDS. Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

(49) WETLAND ALTERATION. Any construction, filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

18.03 SHORELAND-WETLAND ZONING DISTRICT.

(1) DISTRICT BOUNDARIES OF SHORELAND-WETLANDS.

(a) The Shoreland-Wetland District includes all wetlands in the City which are 5 acres or more in size and are shown on the final Wetland Inventory Map that has been adopted and made a part of this chapter in sec. 18.01(10) and which are:

1. Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the City shall be presumed to be navigable if they are listed in the Department publication "Surface Water Resources of Waupaca County" or are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been made a part of this chapter in sec. 18.01(10).

2. Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the flood plain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this chapter in sec. 18.01(10). Flood plain zoning maps adopted in sec. 18.01(10) of this chapter shall be used to determine the extent of flood plain areas.

(b) Determinations of navigability and ordinary high-water mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary high-water mark.

(c) When an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the Official Zoning Maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the Shoreland-Wetland District boundary, as mapped, is in error. If Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the Official Zoning Maps, the Zoning Administrator shall be responsible for initiating a map amendment within a reasonable period.

(d) Under '144.26(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule, wetland zoning ordinances required under '62.231, Wis. Stats., and Wis. Adm. Code N\$117 do not apply to lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river.
2. Those parts of the drainage ditches adjacent to such lands were not navigable streams before ditching.
3. Such lands are maintained in nonstructural agricultural use.

(2) PERMITTED USES IN SHORELAND-WETLANDS. The following uses are permitted subject to the provisions of Chs. 30 and 31, Wis. Stats., and the provisions of other local, State and Federal laws, if applicable.

(a) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:

1. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.
2. The harvesting of wild crops such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds in a manner that is not injurious to the natural reproduction of such crops.
3. The practice of silviculture, including the planting, thinning and harvesting of timber.
4. The pasturing of livestock.
5. The cultivation of agricultural crops.

6. The construction and maintenance of duck blinds.

(b) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:

1. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected.

2. The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries.

3. The maintenance and repair of existing drainage systems, where permissible under '30.20, Wis. Stats., to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Ch. 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible.

4. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.

5. The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance.

6. The installation and maintenance of sealed tiles for the purpose of draining lands outside the Shoreland-Wetland District provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed in sub. (4)(a) below.

7. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(c) Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided below:

1. The construction and maintenance of roads which are necessary for the continuity of the City street system, the provision of essential utility and emergency services or to provide access to uses permitted under this subsection, provided that:

a. The road cannot, as a practical matter, be located outside the wetland.

b. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed in sub. (4)(a) below.

c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use.

d. Road construction activities are carried out in the immediate area of the roadbed only.

e. Any wetland alteration must be necessary for the construction or maintenance of the road.

2. The construction and maintenance of nonresidential buildings, provided that:

- a. The building is used solely in conjunction with a use permitted in the Shoreland-Wetland District or for the raising of waterfowl, minnows or other wetland or aquatic animals.
- b. The building cannot, as a practical matter, be located outside the wetland.
- c. The building does not exceed 500 square feet in floor area.
- d. Only limited filling and excavating necessary to provide structural support for the building is allowed.

3. The establishment and development of public and private parks and recreation areas; outdoor education areas; historic, natural and scientific areas; game refuges and closed areas, fish and wildlife habitat improvement projects; game bird and animal farms; wildlife preserves and public boat launching ramps, provided that:

- a. Any private development allowed under this subparagraph shall be used exclusively for the permitted purpose.
- b. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed.
- c. The construction and maintenance of roads necessary for the uses permitted under this subparagraph are allowed only where such construction and maintenance meets the criteria in par. (c)1. above.
- d. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

4. The construction and maintenance of electric and telephone transmission lines and water, gas and sewer lines, and related facilities and the construction and maintenance of railroad lines provided that:

- a. The transmission and distribution lines and related facilities and railroad lines cannot, as a practical matter, be located outside the wetland.
- b. Only limited filling or excavating necessary for such construction or maintenance is allowed.
- c. Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in sub. (4)(a) below.

(3) PROHIBITED USES IN SHORELAND-WETLANDS.

(a) Any use not listed in sub. (2) above is prohibited unless the wetland or a portion of the wetland has been rezoned by amendment of this chapter in accordance with sub. (4) below and sec. 18.07 of this chapter.

(b) The use of a boathouse for human habitation and the construction or replacement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

(4) REZONING SHORELAND-WETLANDS.

(a) Rezoning of a shoreland-wetland shall require amendment of the Final Wisconsin Wetland Inventory Map, adopted in sec. 18.01(10) of this chapter pursuant to procedures established in sec. 18.07 of this chapter. In order to insure that any amendment will be consistent with the shoreland protection objectives of

'144.26, Wis. Stats., the City shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and flood water storage capacity;
2. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against soil erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(b) Upon notification of a proposed amendment as required by sec. 18.07 of this chapter, if the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in par. (a) above, the Department shall so notify the City of its determination either prior to or during the public hearing held on the proposed amendment.

(c) If the Department notifies the Plan Commission, in writing, that a proposed amendment may have a significant adverse impact upon any of the criteria listed in par. (a) above that proposed amendment, if approved by the City, shall not become effective until more than 30 days have elapsed since written notice of the Council approval was mailed to the Department, as required by sec. 18.07 of this chapter. If within the 30 day period, the Department notifies the Council that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the City under '62.231(6), Wis. Stats., the proposed amendment shall not become effective until that ordinance adoption procedure is completed or otherwise terminated. The record of the Council decision on the proposed amendment shall advise the petitioner of the provisions of this subsection.

18.04 FLOOD PLAIN ZONING DISTRICT.

(1) GENERAL PROVISIONS FOR ALL FLOOD PLAINS.

(a) Areas to be Regulated. Areas regulated by this chapter shall include all areas within the incorporated limits of the City that would be covered by the "regional flood," as defined in sec. 18.02 of this chapter.

(b) Establishment of Districts. The regional flood plain areas within the jurisdiction of this chapter are hereby divided into 3 districts defined as follows:

1. The FW Floodway District consists of the channel of a river or stream and those portions of the flood plain adjoining the channel that are required to carry and discharge the regional flood waters.
2. The FF Flood Fringe District consists of that portion of the flood plain between the regional flood limits and the floodway.
3. The GFP General Flood Plain District consists of all areas which have been or may be hereafter covered by flood water during the regional flood. It includes both the Floodway and Flood Fringe Districts.

(c) Locating Flood Plain Boundaries. Where an apparent discrepancy exists between the location of the outermost boundary of the Flood Fringe District or the General Flood Plain District shown on the Official Flood Plain Zoning Map and actual field conditions, the location of the district boundary line shall be initially determined by the Zoning Administrator using the criteria set forth in subpars. 1. and 2. below. Where the Zoning Administrator finds that there is a significant difference between the district boundary shown on the map and the actual field conditions, the map shall be amended using the procedures established in par. (i) below. Disputes between the Zoning Administrator and an applicant over the location of the district boundary line shall be settled by the Board of Zoning Appeals according to sec. 18.06(5) of this chapter.

1. Where flood profiles exist, the location of the district boundary line shall be determined by the Zoning Administrator using both the scale appearing on the map and the elevations shown on the water surface profile of the regional flood. Where a discrepancy exists between the boundary line location shown on the map and actual field conditions, the regional flood elevations shall govern. A map amendment is required where there is a significant discrepancy between the map and actual field conditions. The Zoning Administrator shall have the authority to immediately grant or deny a land use permit on the basis of a district boundary derived from the elevations shown on the water surface profile of the regional flood, whether or not a map amendment is required. The Zoning Administrator shall be responsible for initiating any map amendments required under this paragraph within a reasonable period of time.

2. Where flood profiles do not exist, the location of the district boundary line shall be determined by the Zoning Administrator using the scale appearing on the map, visual on-site inspection and any available information provided by the Department. Where there is a significant difference between the district boundary line shown on the map and actual field conditions, the map shall be amended. Where a map amendment has been approved by both the Council and the Department, the Zoning Administrator shall have the authority to grant or deny a land use permit.

(d) Removal of Lands From Flood Plain. Compliance with the provisions of this chapter shall not be grounds for removing lands from the flood plain district, unless they are removed by filling to a height of at least 2 feet above the regional flood elevation, and the map is amended pursuant to par. (i) below. To remove flood insurance requirements, FEMA must first revise the Flood Insurance Rate Map or issue a letter of map amendment or revision.

(e) Hydraulic and Hydrologic Analysis.

1. No development shall be allowed in flood plain areas which will:
 - a. Cause an obstruction to flow, defined in sec. 18.02 of this chapter, as any development which physically blocks the conveyance of flood waters by itself or in conjunction with future similar development causing an increase in regional flood height; or
 - b. Cause an increase in regional flood height due to flood plain storage area lost, which is equal to or exceeding 0.01 foot;

except as provided in subpar. 2. below.
2. Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this chapter, the official flood plain zoning maps, including floodway lines and water surface profiles, according to par. (i) below and sec. 18.07 of this chapter, and only if the total cumulative effect of the proposed development will not increase the height of the regional flood more than 1.0 foot for the affected hydraulic reach of the stream.

3. The Zoning Administrator shall deny permits where it is determined the proposed development will cause an obstruction to flow or increase in regional flood height of 0.01 foot or greater.

(f) Mobile Homes and Manufactured Homes.

1. Owners or operators of all existing manufactured or mobile home parks and subdivisions located in the regional flood plain shall provide for adequate surface drainage to minimize flood damage.

2. All new, replacement and substantially improved manufactured or mobile homes to be placed or improved on a site located in the regional flood plain shall:

- a. Be elevated to the flood protection elevation.
- b. Meet the residential development standards for the flood fringe in sub. (3)(c)1. below.
- c. Be anchored so they do not float, collapse or move laterally during a flood.

(g) Watercourse Alterations. Prior to any alteration or relocation of a watercourse and prior to the issuance of any land use permit which may be required for the alteration or relocation of a watercourse, the Zoning Administrator shall notify adjacent municipalities, the appropriate district office of the Department and the appropriate office of FEMA and shall require the applicant to secure all necessary State and Federal permits. The flood-carrying capacity within the altered or relocated portion of any watercourse shall be maintained.

(h) Floodproofing.

- 1. Where floodproofing measures are required, they shall be designed to:
 - a. Withstand the flood pressures, depths, velocities, uplift and impact forces and other factors associated with the regional flood.
 - b. Assure protection to the flood protection elevation.
 - c. Provide anchorage of structures to foundations to resist flotation and lateral movement.
 - d. Shall insure that the structural walls and floors are watertight and completely dry without human intervention during flooding to the flood protection elevation.

2. No permit or variance shall be issued until the applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are adequately designed to protect the structure or development to the flood protection elevation for the particular area.

- 3. Floodproofing measures could include:
 - a. Reinforcement of walls and floors to resist rupture or collapse caused by water pressure or floating debris.
 - b. Addition of mass or weight to structures to prevent flotation.
 - c. Placement of essential utilities above the flood protection elevation.
 - d. Surface or subsurface drainage systems, including pumping facilities, to relieve external foundation wall and basement floor pressures.
 - e. Construction of water supply wells and waste treatment systems to prevent the entrance of flood waters into such systems.
 - f. Cut-off valves on sewer lines and the elimination of gravity flow basement drains.

(i) Amendments.

1. When amendments are required, the procedures in sec. 18.07 of this chapter shall apply. Actions which require an amendment include, but are not limited to, the following:
 - a. Any change to the official flood plain map, including the floodway line, or boundary of the flood plain area.
 - b. Correction of significant discrepancies between the water surface profiles and flood plain zoning maps.
 - c. Any fill in the flood plain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the flood plain.
 - d. Any fill or encroachment into the flood plain that will obstruct flow or cause an increase of 0.01 foot or more in the height of the regional flood.
 - e. Any upgrading of this chapter required by Wis. Adm. Code NR116 or otherwise required by law, or by changes by the City.
2. No amendment to the maps or text of this chapter shall become effective until reviewed and approved by the Department.
3. All persons petitioning for a map amendment which involves an obstruction to flow causing an increase in the height of the regional flood of 0.01 foot or more shall obtain flooding easements, or other appropriate legal arrangements, from all affected local units of government and property owners before the City may approve an amendment which would result in such an increase to the regional flood elevation.
4. When considering amendments to the Official Flood Plain Zoning Map in areas where no water surface profiles exist, the Plan Commission shall consider data submitted by the Department, the Zoning Administrator's visual on-site inspections and other available information. (See par. (c) above)

(2) FW FLOODWAY DISTRICT.

- (a) Applicability. The provisions of this subsection apply to all areas mapped as floodway on the Official Flood Plain Zoning Maps and to those portions of the General Flood Plain District determined to be floodway.
- (b) Permitted Uses. The following open space uses are allowed within the Floodway District and in the floodway portion of the General Flood Plain District, provided that they are not prohibited by any other regulations, that the standards contained in par. (c) below are met, and that all permits or certificates required under this chapter have been issued:
 1. Agricultural uses such as general farming, pasturing, outdoor plant nurseries, horticulture, silviculture, truck farming, forestry, sod farming and wild crop harvesting.
 2. Nonstructural industrial and commercial uses such as loading areas, parking areas and airport landing strips.
 3. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails.
 4. Uses or structures accessory to open space uses or essential for historical areas,

providing they are not in conflict with the provisions in pars. (c) and (d) below.

5. Extraction of sand, gravel or other materials, according to par. (c)4. below.

6. Functionally water-dependent uses such as docks, piers or wharves, including those used as part of a marian, and other water related uses such as dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines may be allowed if all other necessary local, State and Federal permits are secured, including permits issued by the Department under Chs. 30 or 31, Wis. Stats.

7. Public utilities, streets and bridges, according to par. (c)3. below.

(c) Standards for Developments in Floodway Areas.

1. Any development in floodway areas shall:

a. Meet all the provisions of sub. (1) above and have a low flood damage potential.

b. Applicants shall provide the following data for the Zoning Administrator to determine the effects of the proposal according to sub. (1)(e) above:

i. A cross-section elevation view of the proposal, perpendicular to the watercourse, indicating whether the proposed development will obstruct flow.

ii. An analysis calculating the effects of this proposal on regional flood height.

c. The Zoning Administrator shall deny the permit application where it is determined the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for subpar. b. above.

2. Only structures which are accessory to permitted open space uses, or are essential for historical areas, or are functionally dependent on a water front location may be allowed by permit, providing the structures meet all of the following criteria:

a. The structures are not designed for human habitation.

b. The structures are constructed and placed on the building site to cause less than 0.01 foot increase in flood height and offer minimum obstruction to the flow of flood waters. Structures shall be constructed with the longitudinal axis parallel to the direction of flow of flood waters and approximately on the same line as those of adjoining structures.

c. The structures are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river.

d. The structures have all service facilities such as electrical and heating equipment at or above the flood protection elevation for the particular area.

3. Public utilities, streets and bridges may be allowed by permit, provided that:

a. Adequate floodproofing measures are provided to the flood protection elevation.

b. Construction does not cause an increase in the height of the regional food according to sub. (1)(e) above, except where the water surface profiles, flood plain zoning maps and this chapter are amended as needed to reflect any changes resulting from such construction.

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

- a. The requirements of sub. (1) above are met.
- b. The fill or deposition of materials does not encroach on the channel area between the ordinary high-water mark on each bank of the stream unless a permit has been granted by the Department pursuant to Ch. 30, Wis. Stats., and a permit pursuant to Sec. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334 has been issued, if applicable, and the other requirements of this subsection are met.
- c. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion.
- d. Such fills are not associated with private or public solid waste disposal.

(d) Prohibited Uses. All uses not listed as permitted uses in par. (b) above are prohibited, in addition to the following uses which are always prohibited, in floodways and the floodway portions of the general flood plain:

- 1. The storage of any materials that are buoyant, flammable, explosive or injurious to property; water quality; or human, animal, plant, fish or other aquatic life.
- 2. Any uses which are not in harmony with, or which may be detrimental to, the uses permitted in the adjoining districts.
- 3. All private or public on-site sewage disposal systems, except portable latrines that are removed during flooding, and systems associated with public recreational areas and Department-approved campgrounds, that meet the applicable provisions of Wis. Adm. Code ILHR 83.
- 4. All wells, whether public or private, which are used to obtain water for ultimate human consumption, except those for recreational areas that meet the requirements of local ordinances and Wis. Adm. Code Chs. NR 111 and 112.
- 5. All solid or hazardous waste disposal sites, whether public or private.
- 6. All waste water treatment ponds or facilities, except those permitted under Wis. Adm. Code NR 110.15(3)(b).
- 7. All sanitary sewer or water lines, except those used to service existing or proposed development outside of the floodway which complies with the regulations for the flood plain area occupied.

(3) FF FLOOD FRINGE DISTRICT.

(a) Applicability. The provisions of this subsection apply to all areas within the Flood Fringe District, as shown on the Official Flood Plain Zoning Maps, and to those portions of the General Flood Plain District that are determined to be in the flood fringe area.

(b) Permitted Uses. Any structures, land use or development, including accessory structures and uses, are allowed within the Flood Fringe District and flood fringe portions of the General Flood Plain District, provided that the standards contained in sub. (1) above and par. (c) below are met, that the use is not prohibited by any other ordinance or local, State or Federal regulation and that all permits or certifications required under this chapter have been issued.

(c) Standards For Development in Flood Fringe Areas. All of the provisions of sub. (1) above shall apply in addition to the following requirements according to the use requested:

- 1. Residential Uses. Any structure or building used for human habitation which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall meet to exceed the following

standards:

a. The lowest floor, excluding the basement or crawlway, shall be placed on fill at or above the flood protection elevation, which is a point 2 feet above the regional flood elevation, except where subpar. b. below is applicable. The fill elevation shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures where existing streets or sewer lines are at elevations which make compliance impractical provided the Board of Zoning Appeals grants a variance due to dimensional restrictions.

b. The basement or crawlway floor may be placed at the regional flood elevation providing it is floodproofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.

c. Contiguous dryland access defined in sec. 18.02 of this chapter as a vehicular access route above regional flood elevation shall be provided from a structure or building to land which is outside the flood plain, except as provided in subpar. d. below.

d. In existing developments where existing streets or sewer lines are at elevations which make compliance with subpar. c. above impractical, the City may permit new development and substantial improvements where access roads are at or below the regional flood elevation, provided:

i. The City has written assurance from the appropriate local units of police, fire and emergency services that rescue and relief will be provided to the structures by wheeled vehicles, considering the anticipated depth, duration and velocity of the regional flood event; or

ii. The City has an adequate natural disaster plan concurred with the Division of Emergency Government and approved by the Department.

2. Accessory Structures or Uses. An accessory structure or use, not connected to a principal structure, including nonresidential agricultural structures, shall meet all the applicable provisions of sub. (2)(c)1., 2. and 4. and par. (d) above. A lesser degree of protection, compatible with these criteria and the criteria and the criteria in subpar. 3. below, may be permissible for an accessory structure or use provided that the site is not inundated to a depth greater than 2 feet or subjected to flood velocities greater than 2 feet per second during the regional flood.

3. Commercial Uses. Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall meet the requirements of par. (c)1. above. Storage yards, parking lots and other accessory land uses may be at lower elevations, subject to the requirements of subpar. 5. below. However, no such area in general use by the public shall be inundated to a depth greater than 2 feet or subjected to flood velocities greater than 2 feet per second during the regional flood. Inundation of such yards or parking areas to depths greater than 2 feet may be approved provided an adequate warning system exists to protect life and property.

4. 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 area shall be protected to the flood protection elevation utilizing fill, levees, flood walls or other adequate floodproofing measures according to sub. (1)(h) above, or any combination of these. On streams or rivers having prolonged flood durations, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with the criteria in subpar. 3. above and subpar. 5. below may be permissible for storage yards, parking lots and other similar uses.

5. Storage or Processing of Materials. The storage or processing of materials that are buoyant, flammable, explosive or which, in times of flooding, could be injurious to human, animal or plant life shall be at or above the flood protection elevation for the particular area of floodproofed in compliance with sub. (1)(h) above. Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

6. Public Utilities, Streets and Bridges. Public utilities, streets and bridges should be designed to be compatible with the local comprehensive flood plain development plans and:

a. 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 of and substantial improvements to such facilities may only be permitted if they are floodproofed to the flood protection elevation in compliance with sub. (1)(h) above.

b. Minor or auxiliary roads or non-essential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.

7. Sewage Systems, Wells and Solid Waste Sites.

a. All on-site sewage disposal systems shall be floodproofed to the flood protection elevation and shall meet the applicable provisions of all local ordinances and Wis. Adm. Code ILHR 83.

b. All wells, whether public or private, shall be floodproofed to the flood protection elevation and shall meet the applicable provisions of Wis. Adm. Code NR 111 and 112.

c. All solid or hazardous waste disposal sites, whether public or private, are prohibited.

8. Deposition of Materials. Deposition of materials for any purpose may only be allowed if the provisions of this chapter are met.

(4) GFP GENERAL FLOOD PLAIN DISTRICT.

(a) Applicability. The provisions for this district shall apply to all flood plains for which regional flood data is not available or where regional flood data is available, but floodways have not been delineated. As adequate regional flood data becomes available and floodways are delineated for portions of this district, such portions shall be placed in the Flood Fringe District or the Floodway District, as appropriate.

(b) Permitted Uses. The General Flood Plain District encompasses both floodway and flood fringe areas. Therefore, a determination shall be made pursuant to par. (d) below to determine whether the proposed use is located within a floodway or floodways and sub. (3) above for flood fringe areas are allowed within the General Flood Plain District, according to the standards of par. (c) below and provided that all permits or certificates required under this chapter have been issued.

(c) Standards For Development in the General Flood Plain District. Once it is determined, according to par. (d) below, that a proposed use is located within a floodway, the provisions of sub. (2) above shall apply. Once determined that the proposed use is located within the flood fringe, the provisions of sub. (3) above shall apply. All provisions of the remainder of this chapter apply to either district.

(d) Determining Floodway and Flood Fringe Limits. Upon receiving an application for development within the General Flood Plain District, the Zoning Administrator shall:

1. Require the applicant to submit, at the time of application, 2 copies of an aerial photograph or a plan which accurately locates the proposed development with respect to the General Flood Plain District limits, channel of stream, existing flood plain 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 floodproofing measures.

2. Require the applicant to furnish any of the following additional information as is deemed necessary by the Department for evaluation of the effects of the proposal upon flood height and flood flows, the regional flood elevation and, where applicable, to determine the boundaries of the floodway:

- a. A typical valley cross-section showing the channel of the stream, the flood plain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development, and all historic high water information.
 - b. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement 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.
 - c. Profile showing the slope of the bottom of the channel or flow line of the stream.
 - d. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage of materials, water supply and sanitary facilities.
3. Transmit one copy of the information described in subpars. 1. and 2. above to the Department along with a written request to have that agency provide technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of sec. 18.06(2)(b)3. of this chapter apply, the applicant shall provide all required information and computations.

18.05 NONCONFORMING STRUCTURES AND USES.

(1) GENERAL PROVISIONS. The lawful use of a building, structure or property which existed at the time this chapter, or an applicable amendment to this chapter, took effect and which is not in conformity with the provisions of this chapter, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

(a) If a nonconforming use of the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to the appropriate provisions of this chapter.

(b) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this chapter adopted under '62.231, Wis. Stats., may be continued although such use does not conform with the provisions of this chapter. However, such nonconforming use may not be extended or increased.

(c) The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of '30.121, Wis. Stats.

(d) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

(2) SHORELAND-WETLANDS. Notwithstanding '62.23(7)(h), Wis. Stats., the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this chapter adopted under '62.231, Wis. Stats., or of an environmental control facility in existence on may 7, 1982, related to that structure, is permitted under '62.231(5), Wis. Stats. Section 62.23.(7)(h), Wis. Stats., applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this chapter or amendment.

(3) FLOOD PLAINS, GENERAL PROVISIONS.

(a) No modifications or additions to a nonconforming use or a nonconforming structure shall be permitted unless they are made in conformity with the provisions of this chapter for the area of the flood plain it occupies. For the purpose of this subsection, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling and

the replacement of doors, windows and other nonstructural components; and the maintenance, repair or replacement of existing private sewage or water supply systems, or connections to public utilities.

(b) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed 50% of its present 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 chapter and contiguous dry land access is provided in compliance with sec. 18.04(3)(c)1. of this chapter.

(c) As requests are received for modifications or additions to nonconforming uses or nonconforming structures in the flood plain, a record shall be kept which lists the nonconforming uses and nonconforming structures, their present assessed value, and the cost of those additions or modifications which have been permitted.

(d) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the provisions of sec. 18.04(2) are met. For the purpose of this subsection, restoration is deemed impractical where the total cost of such restoration would exceed 50% of the present assessed value of the structure.

(4) FLOODWAY AREAS.

(a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area unless such modification or addition:

1. Has been granted a permit or variance.
2. Meets criteria of sub. (3) above.
3. Will not increase the amount of obstruction to flood flows as provided in sec. 18.04(1)(e) of this chapter.
4. Any addition to an existing structure shall be floodproofed, pursuant to sec. 18.04(1)(i) of this chapter, by means other than the use of fill, to the flood protection elevation.

(b) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all local ordinances and Wis. Adm. Code ILHR 83.

(c) No new well or modification to an existing well, used to obtain water for ultimate human consumption, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of this chapter and Wis. Adm. Code NR 111 and NR 112.

(5) FLOOD FRINGE AREAS.

(a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the flood fringe area unless such modification or addition has been granted a permit or variance and, except where par. (b) below is applicable, the modification or addition is placed on fill or is floodproofed to the flood protection elevation in compliance with the applicable regulations for that particular use in a flood fringe area in sec. 18.04(3) of this chapter.

(b) Where compliance with the provisions of par. (a) above would result in unnecessary hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Zoning Appeals, using the procedures established in secs. 18.06(5) and (6) of this chapter may grant a variance from those provisions, using the criteria listed below. Modifications or additions

which are protected to elevations lower than the flood protection elevation may be permitted provided:

1. No floor is below regional flood elevation.
2. Human lives are not endangered.
3. Public facilities such as water or sewer are not to be installed.
4. Flood depths will not exceed 2 feet.
5. Flood velocities will not exceed 2 feet per second.
6. The structure will not be used for storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life.

(c) An addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in a flood fringe area on a one-time basis only if the addition:

1. Has been granted by permit or variance.
2. Does not exceed 60 square feet in area.
3. In combination with other modifications or additions to the building, does not exceed 50% of the present assessed value of the building.

(d) All new on-site sewage disposal systems, or addition to, replacement, repair or maintenance of an on-site sewage disposal system in a flood fringe area shall meet all the applicable provisions of all local ordinances and Wis. Adm. Code ILHR 83.

(e) All new wells, or addition to, replacement, repair or maintenance of a well in a flood fringe area shall meet the applicable provisions of this chapter and Wis. Adm. Code NR 111 and 112.

18.06 ADMINISTRATION.

(1) ZONING ADMINISTRATOR. The Zoning Administrator shall have the following duties and powers:

(a) Advise applicants as to the provisions of this chapter, assist them in preparing permit applications and appeal forms, and insure that the regional flood elevation is shown on permit applications where appropriate.

(b) Issue permits and certificates of compliance and inspect properties for compliance with this chapter.

(c) Keep records of all official actions such as:

1. All permits issued.
2. Inspections made.
3. Work approved.
4. Documentation of certified lowest floor and regional flood elevations for flood plain development.

5. Records of water surface profiles, flood plain zoning maps and ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.

(d) Have access to any structure or premises between the hours of 8 A.M. and 6 P.M. for the purpose of performing these duties.

(e) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied to the appropriate district office of the Department.

(f) Investigate and report violations of this chapter to the Plan Commission and the District Attorney, Corporation Counsel or City Attorney.

(g) Submit copies of flood plain text amendments and biennial reports to the regional FEMA office.

(2) BUILDING/ZONING PERMITS.

(a) When Required. Unless another section of this chapter specifically exempts certain types of development from this requirement, a building or zoning permit shall be obtained from the Zoning Administrator before any development, as defined in sec. 18.02 of this chapter, including any change in the use of an existing building or structure, is initiated.

(b) Application. An application for a permit shall be made to the Zoning Administrator upon forms furnished and shall include the following information for the purpose of proper enforcement of these regulations:

1. General Information.

a. Name, address and telephone number of applicant, property owner and contractor.

b. Legal description of the property and a general description of the proposed use or development indicating new construction or modification to existing structures.

2. Site Development Plan. The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:

a. Location, dimensions, area and elevation of the lot noted on a copy of the Wetland Inventory Map, if applicable.

b. Location and boundaries of wetlands.

c. Specifications and dimensions for areas of proposed wetland alteration.

d. Location of the ordinary high-water mark of any abutting navigable waterways.

e. Existing and proposed topographic and drainage features and vegetative cover.

f. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways.

g. Location of any existing or proposed on-site sewage systems or private water supply systems.

h. Location and elevation of existing or future access roads.

i. Location of flood plain and floodway limits on the property as determined from flood plain zoning maps used to delineate flood plain areas.

j. The elevation of the lowest floor of proposed buildings using National Geodetic and Vertical Datum (NGVD).

k. Data sufficient to determine the regional flood elevation at the location of the development and to determine whether or not the requirements of sec. 18.04(1) of this chapter are met. This may include any of the information noted in sec. 18.04(4)(d) of this chapter.

3. Data Requirements to Analyze Developments.

a. The applicant shall provide all computations required to show the effects of the project on flood heights, velocities and flood plain storage, for all subdivision proposals, as "subdivision" is defined in ' 236.02(8), Wis. Stats., and other proposed developments exceeding 5 acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide the following:

- i. Regional flood elevation data.
- ii. Vehicular access to lands outside the flood plain.
- iii. Adequate surface drainage to minimize flood damage.

The estimated cost of the proposal shall include all structural development, landscaping improvements, access and road development, electrical and plumbing, and similar items reasonably applied to the overall development costs, but may not include land costs.

b. The Department shall determine elevations and evaluate the proposal where the applicant is not required to provide computations as above and inadequate data exists. The City may transmit additional information such as the data in sec. 18.04(4)(d) of this chapter, where appropriate, to the Department with the request for analysis.

(c) Expiration. All permits issued under the authority of this chapter shall expire one year form the date of issuance.

(3) CERTIFICATES OF COMPLIANCE.

(a) Except where no building, zoning or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions.

1. The certificate of compliance shall show that the building or premises or part thereof and the proposed use conform to the provisions of this chapter.

2. Application for such certificate shall be concurrent with the application for a permit.

3. The certificate of compliance shall be issued within 10 days after notification of completion of the work specified in the permit, providing the building or premises or proposed use conforms with all the provisions of this chapter.

4. For flood plan development, the applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill and lowest floor elevations are in compliance with the permit issued, including any required floodproofing. Floodproofing adequacy may also be certified by a registered professional architect.

(b) The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof according to rules and regulations established by the City.

(c) Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of adoption of this chapter, certifying, after inspection, the extent and type of use made of the building or premises and or not such use conforms to the provisions of this chapter.

(4) FEES. The Council may, by resolution, adopt fees for the following:

- (a) Building/zoning permits.
- (b) Certificates of compliance.
- (c) Public hearings.
- (d) Legal notice publications.
- (e) Conditional use permits.

(5) BOARD OF ZONING APPEALS.

(a) Membership. See sec. 1.03(3) of this Code.

(b) Powers and Duties. The Board of Zoning Appeals shall:

1. Appeals. Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this chapter.

2. Conditional Uses. Hear and decide applications for any conditional use permits required by this chapter.

3. Variances. May grant, upon appeal, a variance from the dimensional standards of this chapter, pursuant to sub. (6) below.

(c) Appeals to the Board. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement decision, or determination of the official whose decision is in question. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filling with the official whose decision is in question and with the Board of Zoning Appeals a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all the documents constituting the record concerning the matter appealed.

(d) Hearing Appeals and Applications for Variances and Conditional Use Permits.

1. Notice and Hearing. The Board of Zoning Appeals shall fix a reasonable time for a hearing on the appeal or application. The Board shall give public notice by publishing a Class 1 notice under Ch. 985, Wis. Stats., specifying the date, time and place of the hearing and the matters to come before the Board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate district office of the Department at least 10 days prior to hearings on proposed variances, conditional uses and appeals for map or text interpretations. At the public hearing, any party may appear in person or by agent or attorney.

2. Decision. A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on variances, conditional uses and appeals for map or text interpretations shall be submitted to the appropriate district office of the Department within 10 days after they are granted or denied. The final disposition of an appeal or application to the Board of Zoning Appeals shall be in the form of a written resolution or order signed by the Chairman and Secretary of the Board. Such resolution shall state the specific

facts which are the basis of the Board's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.

(e) Boundary Disputes. The following procedure shall be used by the Board of Zoning appeals in hearing disputes concerning the district boundaries shown on the Official Flood Plain Zoning Map:

1. Where a flood plain district boundary is established by approximate or detailed flood plain studies, the regional flood elevations or profiles for the point in question shall be the governing factor in locating the district boundary. If no regional flood elevations or profiles are available to the Board, other available evidence may be examined.

2. In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the Board.

3. Where it is determined that the district boundary is incorrectly mapped, the Board should either inform the Plan Commission to petition the City or inform the person contesting the location of the boundary to petition the City for a map amendment.

(6) VARIANCES.

(a) The Board of Zoning Appeals may, upon appeal, grant a variance from the dimensional standards of this chapter where an applicant convincingly demonstrates that:

1. Literal enforcement of the provisions of the chapter will result in unnecessary hardship on the applicant.

2. The hardship is due to special conditions unique to the property, and not common to a group of adjacent lots or premises, in which case this chapter or the Zoning Map amended.

3. Such variance is not contrary to the public interest.

(b) A variance shall not:

1. Allow development below the regional flood elevation.

2. Grant or increase any use of property prohibited in the zoning district.

3. Be granted for a hardship based solely on an economic gain or loss.

4. Be granted for a hardship that is self-created.

5. Damage the rights or property values of other persons in the area.

6. Permit a lower degree of flood protection in a floodway area than the flood protection elevation. In the flood fringe area, a lower degree of flood protection than the flood protection elevation may only be allowed pursuant to sec. 18.05(5)(b) of this chapter.

(c) When a variance is granted in a flood plain area, the applicant shall be notified, in writing, by the Board of Zoning Appeals that increased flood insurance premiums may result. A copy of this notification shall be maintained with the variance appeal record.

(7) CONDITIONAL USE PERMITS.

(a) Any use listed as a conditional use in this chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional permits has ben granted by the

Board of Zoning Appeals, following the procedures in sub. (5)(c) above. To secure information upon which to base its determination, the Board of Zoning Appeals may require the applicant to furnish, in addition to the information required for a building/zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this chapter.

(b) Conditions. Upon consideration of the permit application and the standards applicable to the permitted uses in this chapter, the Board of Zoning Appeals shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this chapter, as are necessary to further the purposes of this chapter as listed in sec. 18.01(3) of this chapter. Such conditions may include specifications for, without limitation because of specific enumeration; type of shore cover; erosion protection measures; increased side yard setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction.

(8) REVIEW OF APPEALS OF PERMIT DENIALS.

(a) The Board of Zoning Appeals shall review all data constituting the basis for the appeal of permit denial. This data may include, where appropriate:

1. Permit application data listed in sub. (2)(b) above.
2. Floodway/flood fringe determination data in sec. 18.04(4)(d) of this chapter.
3. Data listed in sec. 18.04(2)(c)1. of this chapter where the applicant has not submitted this information to the Zoning Administrator.
4. Other data submitted to the Zoning Administrator with the permit application, or submitted to the Board with the appeal.

(b) For appeals of all denied permits, the Board shall:

1. Follow the procedures of sub. (5) above.
2. Consider any zoning agency recommendations.
3. Either uphold the denial or grant the appeal.

(c) For appeals concerning increases in regional flood elevation, the Board shall:

1. Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 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.
2. Grant the appeal where the Board agrees that the data property demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

(9) PUBLIC INFORMATION.

(a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the flood plain.

(b) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.

(c) All legal descriptions of property in the flood plain should include information designating the flood plain zoning classification when such property is transferred.

18.07 AMENDING FLOOD PLAIN AND SHORELAND-WETLAND ZONING REGULATIONS, PROCEDURES. The Council may supplement or change the district boundaries and the regulations contained in this chapter according to '62.23(7)(d)2., Wis. Stats., Wis. Adm. Code NR 116 and 117 and the following:

- (1) The Shoreland-Wetland District amendment provisions of sec. 18.03(4) of this chapter and the flood plain district amendment provisions of sec. 18.04(1) of this chapter shall apply.
- (2) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within 5 days of the submission of the proposed amendment to the Plan Commission.
- (3) All proposed text and map amendments shall be referred to the Plan Commission and a public hearing shall be held as required by '62.23(7)(d)2., Wis. Stats., following publication of a Class 2 notice as defined in sec. 18.02 of this chapter. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.
- (4) A copy of the decision on each amendment shall be provided to the Department district office within 10 days of the decision.

18.08 ENFORCEMENT AND PENALTIES. Any development, as defined in sec. 18.02 of this chapter, or use established after the effective date of this chapter in violation of this chapter by any person shall be deemed a violation. The Zoning Administrator shall refer violations to the Plan Commission and City Attorney who shall prosecute such violations. Any person who violates or refuses to comply with any of the provisions of this chapter shall be subject to a forfeiture of not less than \$10 nor more than \$100 per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated at suit of the City, the State or any citizen thereof, pursuant to '87.30(2), Wis. Stats.