

176.39 FLOOD HAZARD AREA REGULATIONS.

1. Intent. It is the intent of this section to promote the public health, safety and general welfare by minimizing flood losses within the City with provisions designed to:
 - A. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
 - B. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or which cause excessive increases in flood heights or velocities.
 - C. Require that uses vulnerable to floods, including public utilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
 - D. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
 - E. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.
2. Findings of Fact.
 - A. The flood hazard areas of the City are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and impairment of the tax base; all of which adversely affect the health, safety and general welfare of the community.
 - B. These losses, hazards and related adverse effects are caused by occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flood and the cumulative effective of flood plain construction on flood flows which causes increases in flood heights and flood water velocities.
 - C. This section relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources.
3. Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

A. “Basement” means any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see “lowest floor.”

B. “Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

C. “Factory-built home” means any structure designed for residential use which is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site. For the purpose of this section, factory-built homes include mobile homes, manufactured homes and modular homes and also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

D. “Factory-built home park” means a parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.

E. “Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

F. “Flood elevation” means the elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of floodwaters related to the occurrence of the 100-year flood.

G. “Flood Insurance Rate Map (FIRM)” means the official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.

H. “Flood Insurance Study” means a study initiated, funded and published by the Federal Insurance Administration for the purpose of evaluating in detail the existence and severity of flood hazards; providing the City with necessary information for adopting a flood plain management program; and establishing actuarial flood insurance rates.

I. “Flood plain” means any land area susceptible to being inundated by water as a result of a flood.

J. “Flood plain management” means an overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency

preparedness plans, flood control works, floodproofing and flood plain management regulations.

K. “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities which will reduce or eliminate flood damage to such structures.

L. “Floodway” means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not result in substantially higher flood levels and flow velocities.

M. “Floodway fringe” means those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

N. “Lowest floor” means the floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

- (1) The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section 176.39(12)(D)(1); and
- (2) The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage; and
- (3) Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one foot above the 100-year flood level; and
- (4) The enclosed area is not a “basement” as defined in this section.

In cases where the lowest enclosed area satisfies criteria (1), (2), (3) and (4) above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

O. “New construction” (new buildings, factory-built home parks) means those structures or development for which the start of construction commenced on or after the effective date of the Flood Insurance Rate Map, July 5, 1982.

P. “One Hundred (100) Year Flood” means a flood, the magnitude of which has a one percent (1%) chance of being equaled or exceeded in any

given year or which, on the average, will be equaled or exceeded at least once every one hundred (100) years.

Q. “Recreational vehicle” means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

R. “Start of construction” includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

S. “Structure” means anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks and other similar uses.

T. “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

U. “Substantial improvement” means:

(1) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either (i) before the “start of construction” of the improvement, or (ii) if the structure has been “substantially damaged” and is being restored, before the damage occurred. The term does not, however, include any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe conditions for the existing use. The term also does not include any alteration of an “historic structure,” provided the alteration will not preclude the structure’s continued designation as an “historic structure.”

(2) Any addition which increases the original floor area of a building by twenty-five percent (25%) or more. All additions constructed after the effective date of the Flood Insurance Rate Map, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed twenty-five percent.

4. Lands to Which Section Applies. The provisions of this section shall apply to all lands within the jurisdiction of the City shown on the Flood Insurance Rate Map to be within the 100-year flood boundaries. The Floodplain (Overlay) District boundaries shall be as shown on the Flood Insurance Rate Maps (FIRM) for Linn County and Incorporated Areas, City of Marion, Panels 19113C0295D, 0303D, 0304D, 0308D, 0311D, 0312D, 0313D, 0314D, 0316D, 0318D and 0320D, dated April 5, 2010, are hereby adopted by reference and declared to be the Official Floodplain Insurance Rate Map. The flood profiles and all explanatory material contained with the Flood Insurance Study and the Flood Insurance Rate Maps are also hereby adopted by reference and declared to be a part of this section.

(Ord. 10-04 – May 10 Supp.)

5. Rules for Interpretation of District Boundaries. The boundaries of the flood plain and floodway districts shall be determined by scaling distances on the Official Flood Plain Zoning Map. Where interpretation is needed as to the exact location of the boundaries as shown on the Official Flood Plain Zoning Map, the City Engineer shall make the necessary interpretation, subject to appeal as set forth in subsection 20 of this section. The person contesting the location of the district boundary shall be given two reasonable opportunities to present his or her case and submit technical evidence.

6. Compliance. No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this section and other applicable regulations which apply to uses within the jurisdiction of this section.

7. Abrogation and Greater Restrictions. It is not intended by this section to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this section imposes greater restrictions, the provisions of this section shall prevail. Any ordinances inconsistent with this section are hereby repealed to the extent of the inconsistency only.

8. Interpretation. In their interpretation and application, the provisions of this section shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

9. Warning and Disclaimer of Liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This section does not imply that areas outside the flood plain districts will be free from flooding or flood damages. This section shall not create liability on the part of the City or any officer or employee thereof for such flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

10. Establishment of Flood Plain Zoning Districts. The flood plain areas within the jurisdiction of this section are classified into the following districts:

A. Floodway (Overlay) District – The Floodway District shall be consistent with the boundaries of the floodway as shown on the Official Flood Plain Zoning Map.

B. Floodway Fringe (Overlay) District - The Floodway Fringe District shall be those areas shown as floodway fringe on the Official Flood Plain Zoning Map.

C. General Flood Plain (Overlay) District – The General Flood Plain District shall be those areas shown on the Official Flood Plain Zoning Map as being within the approximate 100 year flood boundary.

D. Shallow Flooding (Overlay) District – The Shallow Flooding District shall be those areas shown on the Official Flood Plain Zoning Map as being within the 100 year flood boundary and identified on the Flood Insurance Rate Map as AO or AH zones.

11. Floodway (Overlay) District - FW.

A. Permitted Uses. The following uses shall be permitted within the Floodway District to the extent they are not prohibited by the underlying zoning district or any other ordinance and provided they do not include placement of structures, factory-built homes, fill or other obstruction, the storage of material or equipment, excavation or alteration of a watercourse.

- (1) Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, forestry, sod farming, and wild crop harvesting.
- (2) Industrial and commercial accessory uses such as loading areas, parking areas, 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, hiking and horseback riding trails.
- (4) Accessory residential uses such as lawns, gardens, parking areas and play areas.
- (5) Such other open-space uses similar in nature to the above uses.

B. Conditional Uses. The following conditional uses which involve structures (temporary or permanent), fill, storage of materials or equipment are permitted in the Floodway District only when authorized by the Board of Adjustment as provided for in subsection 20. Such uses must also meet the applicable provisions of the Floodway District Performance Standards.

- (1) Uses or structures accessory to open-space uses.
- (2) Circuses, carnivals, and similar transient amusement enterprises.
- (3) New and used car lots, signs, and billboards.
- (4) Extraction of sand, gravel, and other materials.

- (5) Marinas, boat rentals, docks, piers, and wharves.
- (6) Utility transmission lines and underground pipelines.
- (7) Similar and compatible uses to those allowed as principal permitted or conditional uses in this district.

C. Performance Standards. All Floodway District uses allowed as a permitted or conditional use shall meet the following standards:

- (1) No use shall be permitted in the Floodway District that would result in any increase in the 100-year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- (2) All uses within the Floodway District shall:
 - a. Be consistent with the need to minimize flood damage.
 - b. Use construction methods and practices that will minimize flood damage.
 - c. Use construction materials and utility equipment that are resistant to flood damage.
- (3) No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch or any other facility or system.
- (4) Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.
- (5) Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
- (6) Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited. Storage of other material may be allowed if readily removable from the Floodway District within the time available after flood warning.
- (7) Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capability within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.

(8) Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.

(9) Pipeline stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

12. Floodway Fringe (Overlay) District - FF. All uses within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by the underlying zoning district or any other ordinance and provided they meet applicable performance standards of the Floodway Fringe District. All uses must be consistent with the need to minimize flood damage and shall meet the following applicable performance standards.

A. All structures shall be:

(1) Adequately anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Constructed with materials and utility equipment resistant to flood damage.

(3) Constructed by methods and practices that minimize flood damage.

B. Residential Buildings. All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one foot above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than one foot above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed, subject to favorable consideration by the Board of Adjustment, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards

associated with flooding. All new residential structures shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.

C. **Nonresidential Buildings.** All new or substantially improved non-residential buildings shall have the lowest floor (including basement) elevated a minimum of one foot above the 100-year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; and that the structure, below the 100-year flood level, is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to National Geodetic Vertical Datum) to which any structures are floodproofed shall be maintained by the City Engineer.

D. All new and substantially improved structures.

(1) Fully enclosed areas below the “lowest floor” (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

(2) New and substantially improved structures must be designed (or modified) and adequately anchored to prevent

flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(3) New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

E. Factory-built homes shall meet the following standards:

(1) Factory-built homes, including those placed in an existing factory-built home park or subdivision, shall be anchored to resist flotation, collapse or lateral movement.

(2) Factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.

F. Utility and Sanitary Systems.

(1) On-site waste disposal systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

(2) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities shall be provided with a level of flood protection equal to or greater than one foot above the 100-year flood elevation.

(3) New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities shall be provided with a level of protection equal to or greater than one foot above the 100-year flood elevation.

(4) Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

G. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one foot above the 100-year flood level. Other material and equipment must either be similarly elevated or (i) not be subject to major flood

damage and be anchored to prevent movement due to flood waters or (ii) be readily removable from the area within the time available after flood warning.

H. Flood control structural works such as levees, flood-walls, etc. shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 feet of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.

I. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch, or other drainage facility or system.

J. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision lots intended for residential development shall provide all lots with a means of vehicular access that will remain above the flood level during occurrence of the 100 year flood.

(1) Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable standards of this section.

(2) Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include 100-year flood elevation data for those areas located within the Floodplain (Overlay) District.

(Ord. 10-04 – May 10 Supp.)

K. The exemption of detached garages, sheds and similar structures from the 100-year flood elevation requirements may result in increased premium rates for insurance coverage of the structure and contents, however, said detached garages, sheds and similar accessory type structures are exempt from the 100-year flood elevation requirements when:

(1) The structure shall not be used for human habitation.

(2) The structure shall be designed to have low flood damage potential.

(3) The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.

(4) Structures shall be firmly anchored to prevent flotation which may result in damage to other structures.

(5) The service facilities of the structures, such as electrical and heating equipment, shall be elevated or floodproofed to at least one foot above the 100-year flood level.

L. Recreational Vehicles. Recreational vehicles are exempt from the requirements of subsection 12 E (Factory-built homes) of this section

regarding anchoring and elevation of factory-built homes when the following criteria are satisfied:

- (1) The recreational vehicle shall be located on the site for less than 180 consecutive days; and
- (2) The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy the requirements of this section regarding anchoring and elevation of factory-built homes.

(Ord. 10-04 – May 10 Supp.)

13. General Flood Plain (Overlay) District - FP.

A. Permitted Uses. The following uses shall be permitted within the General Flood Plain District to the extent they are not prohibited by the underlying zoning district or any other ordinance and provided they do not include placement of structures, factory-built homes, fill or other obstructions; the storage of materials or equipment; excavation or alteration of a watercourse.

- (1) Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- (2) Industrial-commercial uses such as loading areas, parking areas, and airport landing strips.
- (3) Private and public recreation 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, hiking and horseback riding trails.
- (4) Residential uses such as lawns, gardens, parking areas and play areas.

B. Conditional Uses. Any use which involves placement of structures, factory-built homes, fill or other obstructions; the storage of materials or equipment; excavation or alteration of a watercourse may be allowed only upon issuance of a conditional use permit by the Board of Adjustment as provided for in subsection 20. In addition, all such conditional uses shall be reviewed by the Department of Natural Resources to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the 100-year flood level. The applicant shall be responsible for

providing the Department of Natural Resources with sufficient technical information to make the determination as to whether the land is in the floodway or floodway fringe.

C. Performance Standards.

(1) All conditional uses, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District.

(2) All conditional uses, or portions thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the applicable standards of the Floodway Fringe (Overlay) District.

14. Shallow Flooding (Overlay) District - SF. All uses within the Shallow Flooding District shall be permitted to the extent that they are not prohibited by the underlying zoning district or any other ordinance and provided they meet the applicable performance standards of the Shallow Flooding District. The performance standards of the Shallow Flooding District shall be the same as the performance standards for the Floodway Fringe District with the following exceptions:

A. In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the number of feet as specified on the Rate Map above the crown of the nearest street.

B. In shallow flooding areas designated as an AH Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the elevation as specified on the Rate Map.

15. Administration. The City Engineer shall administer and enforce this section. The duties and responsibilities of the City Engineer include, but are not necessarily limited to, the following:

A. Review all flood plain development permit applications to insure that the provisions of this section will be satisfied.

B. Review all flood plain development permit applications to insure that all necessary permits and approvals have been obtained from Federal, State or local governmental agencies.

C. Record and maintain a record of (i) the elevation (in relation to National Geodetic Vertical Datum) of the lowest floor of all new or substantially improved structures or (ii) the elevation to which new or substantially improved structures have been floodproofed.

D. Notify adjacent communities and/or counties and the Department of Natural Resources prior to any proposed alteration or relocation of a

watercourse and submit evidence of such notifications to the Federal Insurance Administrator.

E. Keep a record of all permits, appeals, variances and such other transactions and correspondence pertaining to the administration of this section.

F. Submit to the Federal Insurance Administrator an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.

G. Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.

H. Review subdivision proposals to insure such proposals are consistent with the purpose of this section and advise the Council of potential conflicts.

16. Flood Plain Development Permit Required. A Flood Plain Development Permit issued by the City Engineer shall be secured prior to initiation of any flood plain development. Flood plain development shall include any manmade changes to improved or unimproved real estate, such as buildings or other structures, mining, filling, grading, paving, excavation, drilling operations, or placement of factory-built homes.

17. Application for Permit. Application for a Flood Plain Development Permit shall be made on forms supplied by the City Engineer and shall include the following information:

A. Description of the proposed work to be covered by the permit.

B. Identification of the land on which the proposed work is to be done.

C. Type of use or occupancy for which the proposed work is intended.

D. Elevation of the 100-year flood.

E. Elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of buildings or of the level to which a building is floodproofed.

F. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.

G. Such other information as the City Engineer deems reasonably necessary for the purpose of this section.

The application for a flood plain development permit shall be accompanied by permit fee which is nonrefundable. The fee for a flood plain development permit shall be established by Council resolution to reflect the current costs of issuing the permit and supervising, regulating, and inspecting the work. (*Ord. 08-14 – Aug. 08 Supp.*)

18. Action on Permit Application. The City Engineer shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets

the applicable provisions and standards of this section and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, as to the specific reasons for disapproval. The City Engineer shall not issue permits for conditional uses or variances except as directed by the Board of Adjustment.

19. Construction and Use to be as Provided in Application and Plans. Flood Plain Development Permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with the approved plans and applications shall be deemed a violation of this section. Prior to the applicant requesting a final building inspection for occupancy, the applicant shall be required to submit certification by a professional engineer or land surveyor registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing or other flood protection measures were accomplished in compliance with the provisions of this section, prior to the use or occupancy of any structure.

20. Conditional Uses, Appeals and Variances. The Zoning Board of Adjustment shall hear and decide all applications for conditional uses, appeals, and variances in accordance with the provisions of Section 176.36, except as provided in this section. Variances from the terms of this flood plain section must meet the following standards:

A. All variances as granted must have the concurrence or approval of the Department of Natural Resources.

B. No variance shall be granted for any development within the Floodway District which would result in any increase in the 100-year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

C. Variances shall only be granted upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public.

D. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this section, the applicant shall be notified in writing by the City Engineer that the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and such construction increases risks to life and property.

21. Factors Upon Which the Decision is Based. In passing upon applications for conditional uses, variances, or appeals, the Board of Adjustment shall consider the factors set forth in Section 176.36, and:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments.
- B. The danger that materials may be swept on to other land or downstream to the injury of others.
- C. The proposed water supply and sanitary systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- E. The importance of the services provided by the proposed facility to the City.
- F. The requirements of the facility for a flood plain location.
- G. The availability of alternate locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing and projected development.
- I. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- J. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
- L. Such other factors which are relevant to the purpose of this section.

22. Conditions Attached to Conditional Uses or Variances. Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of a conditional use or variance as it deems necessary to further the purpose of this section. Such conditions may include, but not necessarily be limited to:

- A. Modification of waste disposal and water supply facilities.
- B. Limitation on periods of use and operation.
- C. Imposition of operational controls, sureties, and deed restrictions.
- D. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this section.

E. Floodproofing measures which are designed consistent with the flood protection elevation for the particular area, flood velocities, duration, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

23. Nonconforming Uses.

A. A structure or the use of a structure or land which was lawful before the passage or amendment of this section but which is not in conformity with the provisions of this section may be continued subject to the following conditions:

(1) If such use is discontinued for twenty-four (24) consecutive months, any future use of the property shall conform to this section. The County Assessor shall notify the City Engineer in writing of instances of non-conforming uses which have been discontinued for 24 months.

(2) Uses or accessory uses thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

(3) If any nonconforming use or structure is destroyed by any means, including flood, to the extent of fifty percent (50%) or more of its value prior to destruction, it shall not be reconstructed except in conformity with the provisions of this section.

(4) No such use shall be expanded, changed, enlarged or altered in a way which increases its degree of nonconformity.

(5) No structural alteration, addition or repair to any nonconforming structure shall exceed fifty percent (50%) of its value at the time of its becoming a nonconforming use, unless the structure is permanently changed to a conforming use.

B. Except as provided in paragraph (A)(2) above, any use which has been permitted as a conditional use or variance shall be considered a conforming use.

24. Amendments. The regulations, restrictions and boundaries set forth in this section may from time to time be amended, supplemented, changed, or repealed as provided in the Code of Iowa and this chapter. However, no amendment, supplement, change, or modification shall be adopted without the prior approval from the Department of Natural Resources.

25. Violations. Violations of this section or failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with grants of conditional uses or variances) shall constitute a

misdemeanor and may be punished as provided in Section 1.06 of this Code of Ordinances. Each day a violation continues shall be considered a separate offense. Nothing herein contained prevents the City from taking such other lawful action as is necessary to prevent or remedy a violation, including but not limited to actions under Chapter 4 of this Code of Ordinances.

(Ord. 10-04 – May 10 Supp.)