

ZONING ORDINANCE

**SECTION 5
FLOOD PROTECTION**

5.1 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

5.1.1 STATUTORY AUTHORIZATION:

The Legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and 462 (Zoning Enabling Statute) delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Chaska, Minnesota does ordain as follows:

5.1.2 FINDINGS OF FACT:

5.1.2.1 The flood hazard areas of the City of Chaska, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

5.1.2.2 Methods Used to Analyze Flood Hazards

This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

5.1.3 STATEMENT OF PURPOSE:

It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Subsection 5.1.2.1 by provisions contained herein.

5.2 GENERAL REGULATIONS

5.2.1 LANDS TO WHICH ORDINANCE APPLIES:

This Ordinance shall apply to all lands within the jurisdiction of the City of Chaska shown on the Official Zoning Map and/or the attachments thereto as being located within the boundary of the Floodway District.

5.2.2 ESTABLISHMENT OF OFFICIAL ZONING MAP:

The attached material shall include the Revised Flood Insurance Study for the City of Chaska prepared by the Federal Insurance Administration, and the Revised Flood Insurance Rate Map (FIRM - map panel 0002) dated July 20, 1998 therein. (Ord. No. 638, Sec. 1, 6/15/98)

5.2.3 REGULATORY FLOOD PROTECTION ELEVATION:

The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood

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elevation caused by encroachments on the floodplain that result from designation of a floodway.

5.2.4 INTERPRETATION:

5.2.4.1 In their interpretation and application, the provisions of this Ordinance 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.

5.2.4.2 The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100 years) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board and to submit technical evidence.

5.2.5 ABROGATION AND GREATER RESTRICTIONS:

It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provision of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

5.2.6 WARNING AND DISCLAIMER OF LIABILITY:

This Ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City of Chaska or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

5.2.7 SEVERABILITY:

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

5.3 ESTABLISHMENT OF FLOODWAY AND FLOOD FRINGE DISTRICTS

5.3.1 DISTRICTS:

5.3.1.1 Floodway District

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The Floodway District watercourses shall include those areas in Zone AE that are marked by diagonal lines on the Flood Insurance Rate Map. The Floodway District for Old Clay Hole and Courthouse Lake shall be those areas below the Ordinary High Water Level (OHWL) as defined in Minnesota Statutes, Chapter 103G.005 Definitions, Subd. 14. (Ord. No. 638, Sec. 2, 6/15/98)

5.3.1.2 Flood Fringe District

The Flood Fringe District along watercourses shall include those areas in Zone AE that are not marked by diagonal lines on the Flood Insurance Rate Map. The Flood Fringe District for Old Clay Hole and Courthouse Lake shall be those areas above the Ordinary High Water Level (OHWL) as defined in Minnesota Statutes, Chapter 103G.005 Definitions, Subd. 14. (Ord. No. 638, Sec. 3, 6/15/98)

5.3.2 COMPLIANCE:

No new 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 Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe Districts, all uses not listed as permitted uses or Uses by Conditional Permit in Subsections 5.4 and 5.5 that follow, respectively, shall be prohibited.

5.3.2.1 Modifications, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of Subsection 5.8 of this Ordinance.

5.3.2.2 As-built elevations for elevated or flood proofed structures must be certified by ground surveys, and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of Subsection 5.7 of this Ordinance.

5.4 FW - FLOODWAY DISTRICT

5.4.1 INTENT:

To recognize substantial areas of land which are located within the path of potential future urban expansion, and which are subject to periodic flooding; and in recognition of the objective to minimize potential damage to property, human suffering, and loss of life due to flooding within such land areas. To recognize the existence of the floodway for active water flow and prohibit any construction restricting the flow of water within the area so defined. All uses to comply with the lower Minnesota Watershed District Flood Plain Regulations.

The Floodway District (FW) shall not be a separate district, but shall be in addition to the underlying "Use District" as shown on the zoning map. All uses of land as set forth in Sections 3 and 4 lying within the Floodway (FW) as shown on the zoning map shall, in addition to the provisions of Use District in which it is situated, comply with Section 5.

5.4.2 PERMITTED USES:

a) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting;

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- b) Industrial-commercial loading areas, parking areas, and airport landing strips;
- c) Private and public 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 single or multiple purpose recreational trails;
- d) Residential lawns, gardens, parking areas and play areas.

5.4.3 STANDARDS FOR FLOODWAY PERMITTED USES:

- a) The use shall have a low flood damage potential;
- b) The use shall be permissible in the underlying zoning district;
- c) The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

5.4.4 USES BY CONDITIONAL USE PERMITS:

The following uses which involve structures (temporary or permanent), fill or storage of materials or equipment may be permitted in the Floodway District only upon application to the Zoning Administrator and issuance of a Conditional Use Permit by the City Council as provided in Subsection 14.7 Conditional Use Permits, of this Ordinance. Uses by Conditional Use Permit include:

- a) Structures accessory to the uses listed in Subsection 5.4.2 above and to the uses listed in b-h below:
- b) Extraction and storage of sand, gravel, and other materials;
- c) Marinas, boat rentals, docks, piers, wharves, and water control structures;
- d) Railroads, streets, bridges, utility transmission lines, and pipe lines;
- e) Storage yards for equipment, machinery, or materials;
- f) Placement of fill;
- g) Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures as well as levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event;
- h) Other uses similar in nature to uses described in Subsection 5.4.2, which in the opinion of the City Council are consistent to the intent of this Ordinance, to promote the public health, safety and general welfare.

5.4.5 STANDARDS FOR FLOODWAY USES BY CONDITIONAL PERMITS:

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5.4.5.1 All Uses

No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a Use by Conditional Permit that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.

5.4.5.2 All floodway Uses by Conditional Permit shall be subject to the procedures and standards contained in Subsection 5.5.5.1 of this Ordinance.

5.4.5.3 The Use by Conditional Permit shall be permissible in the underlying zoning district if one exists.

5.4.5.4 Fill

- a) Fill, dredge, spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable matter;
- b) Dredge spoil sites and sand and gravel operations shall not be allowed in the Floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan;
- c) As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The Conditional Use Permit must be title registered with the property in the Office of the County Recorder or Registrar of Titles.

5.4.5.5 Accessory Structures

- a) Accessory structures shall not be designed for human habitation;
- b) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - i) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and
 - ii) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- c) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 600 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited

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storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:

- i) The structures must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and
- ii) Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.

5.4.5.6 Storage of Materials and Equipment

- a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited;
- b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

5.4.5.7 Structural Works for Flood Control

Structural works for flood control that will change the course, current or cross-section of the protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodplain.

- 5.4.5.8** A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood, and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

5.5 FF - FLOOD FRINGE DISTRICT

5.5.1 INTENT:

The Flood Fringe District (FF) shall not be a separate district but shall be in addition to the underlying "Use District" as shown on the zoning map. All uses of land as set forth in Sections 3 and 4 of this Ordinance, lying within the Flood Fringe (FF) as shown on the zoning map shall, in addition to the provisions of Use District in which it is situated, comply with Subsection 5.5.

5.5.2 PERMITTED USES:

Permitted Uses shall be those uses of land or structures listed as Permitted Uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non-residential structure or use of a structure or land shall be a Permitted Use in the Flood Fringe provided such use does not constitute a public nuisance. All Permitted Uses shall comply with the

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standards for Flood Fringe “Permitted Uses” listed in Subsection 5.5.3 and the “Standards for all Flood Fringe Uses” listed in Subsection 5.5.6 of this Ordinance.

5.5.3 STANDARDS FOR FLOOD FRINGE PERMITTED USES:

5.5.3.1 All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure erected thereon.

5.5.3.2 As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 600 square feet for the outside dimension at ground level may be internally flood proofed in accordance with the following:

a) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 600 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:

- i) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and
- ii) Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.

5.5.3.3 The placement of fill shall be subject to the requirements and procedures outlined in Subsection 9.4 Land Excavation and Reclamation.

5.5.3.4 The storage of any materials or equipment shall be elevated on fill to the Regulatory Flood Protection Elevation.

5.5.3.5 The cumulative placement of fill where at any one time in excess of 1,000 cubic yards of fill is located on the parcel shall be allowable only as a Conditional Use, unless said fill is specifically intended to elevate a structure in accordance with Subsection 5.12 of this Ordinance. The provisions of Subsection 5.5.6 of this Ordinance shall apply.

5.5.4 USES BY CONDITIONAL USE PERMIT:

Other uses are permitted only upon application to the Zoning Administrator and the issuance of a Conditional Use Permit as provided in Subsection 14.7 of this Ordinance and subject to the following provisions:

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a) Commercial Uses

Commercial structures generally must be constructed on fill with no first floor or basement floor below the flood protection elevation. Accessory land uses, such as yards, railroad tracks, and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted, in the absence of a flood warning system, if the area is inundated to greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the regional flood.

b) Manufacturing and Industrial Uses

Manufacturing and industrial buildings, structures, and appurtenant works shall be flood proofed to the flood protection elevation. Measures shall be taken to minimize interference with normal plant operations especially for streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Subsection 5.5.4(a) above. In considering permit applications, the Board shall give due consideration to needs of an industry whose business requires that it be located in floodplain areas.

c) Waste Treatment and Waste Disposal provided that:

- i) No new construction, addition, or modification to existing waste treatment facilities shall be permitted within the flood plain unless emergency plans and procedures for action to be taken in the event of flooding are prepared, filed with, and approved by the Minnesota Pollution Control Agency. The emergency plans and procedures must provide for measure to prevent introduction of any pollutant or toxic material into the flood waters.
- ii) There shall be no disposal of garbage or solid waste materials within flood plain areas except upon issuance of a Conditional Use Permit for sites approved by the Minnesota Pollution Control Agency.

d) Flood Control Works

Flood control Works shall be subject to the following provisions.

The minimum height and design of any dikes, levees, floodwalls, or similar structural works shall be based upon the flood profile of the regional flood confined between the structures subject to the following:

- i) For urban areas the minimum heights and design of structural works shall be at least three feet above the elevation of the regional flood, as confined by structures, or at the elevation of the standard project flood, whichever is greater;
- ii) Modifications and additions to existing structural works shall assure that the works will provide a means of decreasing the flood damage potential

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in the area. Any existing structural work which potentially threatens public health and safety shall be modified or reconstructed in order to meet the standards contained herein within a period of one year of the effective date of this Ordinance;

- iii) Flood protection elevations and floodway limits which reflect proposed measures for flood control shall not be effective until such measures are constructed and operative unless the proposed measures will increase flood heights, in which event, the regulatory flood protection elevations and flood plain limits shall reflect the anticipated increases;
 - iv) Detailed plans shall be submitted to the Board for any new developments placed on the flood plain landward from dikes, floodwalls, and similar structures. The plans must provide for ponding areas or other measures to protect against flooding from internal drainage.
- e) Manufactured Homes and Manufactured Home Parks
- i) The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in floodplain districts will be treated as a new structure and may be placed only if elevated in compliance with Subsection 5.5.3.1 of this Ordinance. If vehicular road access or pre-existing manufactured home parks are not provided, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing Body.
 - ii) New manufactured home parks and expansions to existing mobile home parks shall be subject to the provisions placed on subdivisions by Subsections 5.4.2 and 5.3.2.
 - iii) Manufactured homes in existing mobile home parks that are located in floodplain districts may be replaced only if in compliance with the following conditions:
 - The manufactured home lies in the Flood Fringe District.
 - All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State or local anchoring requirements for resisting wind forces, and that specifically comply with requirements of Minnesota Regulations Chapter 1350, Sections 1350.2800 through 1350.3200.
 - The manufactured home owner or renter is notified that the mobile home site lies in the floodplain and may be subject to flooding.
 - The manufactured home park owner develops a flood emergency plan consistent with the time available after a flood warning.

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5.5.5 STANDARDS FOR FLOOD FRINGE CONDITIONAL USES:

5.5.5.1 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck-under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if:

- a) The enclosed area is above grade on at least one side of the structure;
- b) It is designed to internally flood and is constructed with flood resistant materials;
- c) It is used solely for parking of vehicles, building access, or storage.

The above-noted alternative elevation methods are subject to the following additional standards:

- i) *Design and Certification* - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State's Building Code, and specifically that all electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding;
- ii) *Specific Standards for Above-grade, Enclosed Areas* - Above-grade, fully enclosed areas such as crawl spaces or tuck-under garages must be designed to internally flood and the design plans must stipulate:
 - The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
 - That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles, or storage.

5.5.5.2 Basements, as defined by Section 15 of this Ordinance, shall be subject to the following:

- a) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation;

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- b) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Subsection 5.5.5.3 of this Ordinance.

5.5.5.3 All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making this structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

5.5.5.4 When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a State approved Shoreland Management Ordinance. In the absence of a State approved Shoreland Ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.

5.5.5.5 Storage of Materials and Equipment

- a) The storage of processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited;
- b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

5.5.6 STANDARDS FOR ALL FLOOD FRINGE USES:

5.5.6.1 All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a Variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

5.5.6.2 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designated for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or

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multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

- 5.5.6.3** Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain or any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

5.6 PUBLIC UTILITIES, RAILROADS, ROADS AND BRIDGES

5.6.1 PUBLIC UTILITIES:

All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain shall be flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.

5.6.2 PUBLIC TRANSPORTATION FACILITIES:

Railroad tracks, roads, and bridges to be located within the floodplain shall comply with Subsection 5.4 of this Ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

5.6.3 ON-SITE SEWAGE TREATMENT AND WATER SUPPLY SYSTEMS:

Where public utilities are not provided:

- a) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and
- b) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding.

Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

5.7 SUBDIVISIONS

5.7.1 REVIEW CRITERIA:

No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the floodplain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower

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than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the floodplain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

5.7.2 REMOVAL OF SPECIAL FLOOD HAZARD AREA DESIGNATION:

The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

5.8 ADMINISTRATION / PERMIT REQUIREMENTS

5.8.1 ZONING ADMINISTRATOR:

A Zoning Administrator or other official designated by the Governing Body shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance, the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 14 of this Ordinance.

5.8.1.1 Permit Required

A permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.

5.8.1.2 Application for Permit

Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

5.8.1.3 Hearings

Upon filing with the Zoning Administrator an application for a Conditional Use Permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

5.8.1.4 Decisions

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The City Council shall arrive at a decision for a Conditional Use Permit within 30 days. In granting a Conditional Use Permit, the City Council shall prescribe appropriate conditions and safeguards, in addition to those specified in Subsection 5.8.1.8, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this Ordinance punishable under Subsection 5.11. A copy of all decisions granting Conditional Use Permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

5.8.1.5 Procedures to be followed by the City Council in passing on Conditional Use Permit Applications within all Floodplain Districts:

- a) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Zoning Administrator for determining the suitability by the particular site for the proposed use:
 - i) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel.
 - ii) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.
- b) Transmit one copy of the information described in Subsection(a) immediately above to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters;
- c) Based upon the technical evaluation of the designated engineer or expert, the Zoning Administrator shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

5.8.1.6 Factors upon which the decision of the City Council shall be based. In passing upon Conditional Use Permit applications, the City Council shall consider all relevant factors specified in other sections of this Ordinance, and:

- a) The danger to life and property due increased flood heights or velocities caused by encroachments;
- b) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts, or other hydraulic structures;
- c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;

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- 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 community;
- f) The requirements of the facility for a waterfront location;
- g) The availability of alternative locations not subject to flooding for the proposed use;
- h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- i) The relationship of the proposed use to the Comprehensive Plan and Floodplain 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 waters expected at the site;
- l) Such other factors which are relevant to the purposes of this Ordinance.

5.8.1.7 Time for Acting on Application

The City Council shall act on an application in the manner described above within 30 days from receiving the application, except that where additional information is required pursuant to Subsection 5.8.1.6 of this Ordinance. The Zoning Administrator shall render a written decision within 10 days from the receipt of such additional information.

5.8.1.8 Conditions

Conditions attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the City Council shall attach such conditions to the granting of Conditional Use Permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- a) Modifications of waste treatment and water supply facilities;
- b) Limitations on period of use, occupancy, and operation;
- c) Imposition of operational controls, sureties, and deed restrictions;
- d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures;
- e) Flood-proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures

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are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

5.8.1.9 State and Federal Permits

Prior to granting a Permit or processing an application for a Conditional Use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal Permits.

5.8.1.10 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use

It shall be unlawful to use, occupy or permit the use of occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use of structure until a Certificate of Zoning Compliance shall have been used by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.

5.8.1.11 Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance

Permits, Conditional Use Permits, or Certificate of Zoning Compliance 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 that authorization shall be deemed a violation of this Ordinance, and punishable as provided by Subsection 5.11.1 of this Ordinance.

5.8.1.12 Certification

The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.

5.8.1.13 Record of First Floor Elevation

The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator shall also maintain a record of the elevation to which structures and alterations or additions to structures are flood-proofed.

5.9 VARIANCES AND CONDITIONAL USE PERMITS

5.9.1 VARIANCES:

The City Council may authorize relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the City Council shall clearly identify in writing the special conditions that exist consistent with the criteria specified in the respective enabling legislation which justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the

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Regulatory Flood Protection Elevation for that particular area, or permit standards lower than those required by State law.

The granting of variance shall be subject to the requirements and procedures outlined in Subsection 14.8 of this Ordinance.

5.9.1.1 Flood Insurance Notice and Record Keeping

The City Attorney shall notify the applicant for a variance that:

- a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance;
- b) Such construction below the 100-year or regional flood level increases risks to life and property;
- c) Such notification shall be maintained with a record of all variance actions. The City of Chaska shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

5.9.2 CONDITIONAL USE PERMITS:

5.9.2.1 Purpose

In order to give the district use regulations of this Ordinance the flexibility necessary to achieve the objectives of the Comprehensive Plan, certain uses are permitted subject to the granting of a Conditional Use Permit. Because of their unusual characteristics, such special uses require special consideration so they may be located properly with respect to the objectives of the Comprehensive Plan with respect to their effects on surrounding properties. In order to achieve these purposes, the City Council is empowered to grant and to deny applications for Conditional Use Permits and to impose reasonable conditions upon the granting of these permits.

The granting of Conditional Use Permits shall be subject to the requirements and procedures outlined in Subsection 14.7 of this Ordinance.

5.10 NONCONFORMING USES

5.10.1 STRUCTURES:

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

5.10.1.1 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

5.10.1.2 Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or

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use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood-proofing techniques (i.e., FP-1 through FP-4 flood-proofing classifications) allowable in the State Building Code, except as further restricted in Subsection 5.10.1.3 below.

5.10.1.3 The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the Community's initial floodplain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of Subsections 5.4 or 5.5 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.

5.10.1.4 If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with this provision of this Ordinance. The applicable provisions for establishing new uses or new structures in Subsections 5.4 or 5.5 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe District, respectively.

5.10.1.5 A nonconforming use of a building or parcel of land which has been discontinued for a period of one year shall not be re-established and any future use shall be in conformity with the regulations of this Ordinance.

The afore-mentioned one (1) year discontinuance shall not apply to two family dwellings, which dwellings shall be permitted to be discontinued for a period of five (5) years provided the dwelling continues to contain two physically separate living units and is not converted back to a one family dwelling.

5.11 PENALTIES FOR VIOLATION

5.11.1 VIOLATION:

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of Variance or Conditional Uses) shall constitute a misdemeanor and shall be punishable as defined by law.

5.11.2 ENFORCEMENT:

Nothing herein contained shall prevent the City of Chaska from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include, but are not limited to, the following:

5.11.2.1 In responding to a suspected ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including, but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to

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correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

5.11.2.2 When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Regional Office along with the Community's plan of action to correct the violation to the degree possible.

5.11.2.3 The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either:

- a) Issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or
- b) Notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30 days.

5.11.2.4 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowners to restore the land to the condition which existed prior to the violation of this Ordinance.

5.12 AMENDMENTS

The floodplain designation on the Official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if the Commissioner determined that through other measures, lands are adequately protected for the intended use.

All amendments to this Ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption.

Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10 days written notice of all hearings to consider an amendment to this Ordinance, and said notice shall include a draft of the ordinance amendment or technical study under consideration.

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