

- (3) 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 the fill is specifically intended to elevate a structure in accordance with subsection (b)(1) of this section.
- (4) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
- (5) The provisions of subsection (e) of this section shall apply.
- (c) *Conditional uses.* Any structure that is not elevated on fill or floodproofed in accordance with subsection (b)(1) and (2) of this section and/or any use of land that does not comply with the standards in subsection (b)(3) and (4) of this section shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in subsections (d) and (e) of this section and section 36-404(d).
- (d) *Standards for flood fringe conditional uses.*
 - (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; and
 - c. It is used solely for parking of vehicles, building access or storage.
 - (2) The above-noted alternative elevation methods are subject to the following additional standards:
 - a. 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 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.
 - b. 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:
 1. A minimum area of openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic 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 without any form of human intervention; and
 2. 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.
- (3) Basements, as defined by section 36-396(h) shall be subject to the following:
 - a. Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 - b. Nonresidential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry floodproofed in accordance with subsection (d)(3) of this section.
- (4) All areas of nonresidential structures including basements to be placed below the regulatory flood protection elevation shall be floodproofed in accordance with the structurally dry floodproofing classifications in the state building code. Structurally dry floodproofing must meet the FP-1 or FP-2 floodproofing classification in the state building code and this shall require making the 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 floodproofed to the FP-3 or FP-4 classification shall not be permitted.

- (5) When at any one time within five years more than 200 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 city council. The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.
 - (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 city council.
 - (7) The provisions of subsection (e) of this section shall also apply.
- (e) *Standards for all flood fringe uses.* All new principal structures must have vehicular access at or above an elevation not more than two 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.
- (1) Commercial uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four upon occurrence of the regional flood.
 - (2) Manufacturing and industrial uses. Measures shall be taken to minimize interference with normal plant operations especially along 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 (e)(2) of this section. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in floodplain areas.
 - (3) 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 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.
 - (4) Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map.
 - (5) Standards for recreational vehicles are contained in section 36-403.
 - (6) 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.

(Code 1997, § 1370.05(5))

Sec. 36-400. - General floodplain district.

(a) *Permitted uses.*

- (1) The uses listed in section 36-398(a) shall be permitted uses.
- (2) All other uses shall be subject to the floodway/flood fringe evaluation criteria, pursuant to subsection (b) of this section. Section 36-398 shall apply if the proposed use is in the floodway district and section 36-399 shall apply if the proposed use is in the flood fringe district.

(b) *Procedures for floodway and flood fringe determinations within the general floodplain district.*

- (1) Upon receipt of an application for a permit or other approval within the general floodplain district, the applicant shall be required to furnish such of the following information as is deemed necessary by the zoning administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe district.
 - a. A typical valley cross-subdivisions showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-section, areas to be occupied by the proposed development, and high water information.
 - b. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - c. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - d. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- (2) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minn. R. 6120.5000—6120.6200 and 44 CFR 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective department of natural resources' area hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 - a. Estimate the peak discharge of the regional flood.
 - b. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - c. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than 0.5 foot shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- (3) The zoning administrator shall present the technical evaluation and findings of the designated engineer or expert to the city council. The city council must formally accept the technical evaluation and the recommended floodway or flood fringe district boundary or deny the permit application. The city council, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the department of natural resources or the planning commission for review and comment. Once the floodway and flood fringe district boundaries have been determined, the city council shall refer the matter back to the zoning administrator who shall process the permit application consistent with the applicable provisions of sections 36-398 and 36-399.

(Code 1997, § 1370.05(6))

Sec. 36-401. - Subdivisions.

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 be able to contain a building site outside of the floodway district at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this article and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the floodplain, the floodway and flood fringe district 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.

- (1) *Floodway/flood fringe determinations in the general floodplain district.* In the general floodplain district, applicants shall provide the information required in section 36-336 to determine the 100-year flood elevation, the floodway and flood fringe district boundaries and the regulatory flood protection elevation for the subdivision site.
- (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.

(Code 1997, § 1370.05(7))

Sec. 36-402. - Public utilities, railroads, roads, and bridges.

- (a) *Public utilities.* All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain shall be floodproofed in accordance with the state building code or elevated to above the regulatory flood protection elevation.
- (b) *Public transportation.* Railroad tracks, roads, and bridges to be located within the floodplain shall comply with sections 36-398 and 36-399. 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.
- (c) On-site sewage treatment and water supply systems; where public utilities are not provided:
 - (1) On-site water supply systems must be designed to minimize or eliminate infiltration of floodwaters into the systems; and
 - (2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into floodwaters 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.

(Code 1997, § 1370.05(8))

Sec. 36-403. - Manufactured homes and manufactured home parks and placement of recreational vehicles.

- (a) New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by section 36-401.
- (b) 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 section 36-399. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with section 36-399(e)(1), then replacement manufactured homes will not be allowed until the property owner develops a flood warning emergency plan acceptable to the city council.

- (c) 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.
- (d) Recreational vehicles that do not meet the exemption criteria specified in subsection (d)(1) of this section shall be subject to the provisions of this article and as specifically spelled out in subsections (d)(3) and (4) of this section.
 - (1) Exemption. Recreational vehicles are exempt from the provisions of this article if they are placed in any of the areas listed in subsection (d)(2) of this section and further they meet the following criteria:
 - a. Have current licenses required for highway use.
 - b. Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.
 - c. The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
 - (2) Areas exempted for placement of recreational vehicles.
 - a. Individual lots or parcels of record.
 - b. Existing commercial recreational vehicle parks or campgrounds.
 - c. Existing condominium type associations.
 - d. Recreational vehicles exempted in subsection (d)(1) of this section lose this exemption when development occurs on the parcel exceeding \$500.00 for a structural addition to the recreational vehicle or exceeding \$500.00 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/floodproofing requirements and the use of land restrictions specified in sections 36-398 and 36-399. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood-free location should flooding occur.
 - (3) Standards for new commercial recreational vehicle parks. New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five units or dwelling sites shall be subject to the following:
 - a. Any new or replacement recreational vehicle will be allowed in the floodway or flood fringe districts provided the recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with section 36-399(e)(1). No fill placed in the floodway to meet the requirements of this subsection shall increase flood stages of the 100-year or regional flood.
 - b. All new or replacement recreational vehicles not meeting the criteria of subsection (3)(a) of this section may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of section 36-404(c)(3)c. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. The plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate the provisions of subsection (d)(1) and (2) of this section will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with section 36-402(c).

(Code 1997, § 1370.05(9))

Sec. 36-404. - Administration.

- (a) *Zoning administrator.* A zoning administrator or other official designated by the city council shall administer and enforce this article. If the zoning administrator finds a violation of the provisions of this article the zoning

administrator shall notify the person responsible for such violation in accordance with the procedures stated in section 36-406.

(b) *Permit requirements.*

- (1) *Permit required.* A permit issued by the zoning administrator in conformity with the provisions of this article shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), 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 construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
- (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.
- (3) *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.
- (4) *Certificate of zoning compliance for a new, altered, or nonconforming use.* It is unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the zoning administrator stating that the use of the building or land conforms to the requirements of this article.
- (5) *Construction and use to be as provided on applications, plans, permits, variances, and certificates of zoning compliance.* Permits, conditional use permits, or certificates 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 authorized shall be deemed a violation of this article, and punishable as provided by section 36-406.
- (6) *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 article. Floodproofing measures shall be certified by a registered professional engineer or registered architect.
- (7) *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 or alterations and additions to structures are floodproofed.
- (8) *Notifications for watercourse alterations.* The zoning administrator shall notify, in riverine situations, adjacent communities and the commissioner of the department of natural resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to M.S.A. ch. 103G, this shall suffice as adequate notice to the commissioner of Natural Resources. A copy of the notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- (9) *Notification to FEMA when physical changes increase or decrease the 100-year flood elevation.* As soon as is practicable, but not later than six months after the date such supporting information becomes available, the zoning administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the technical or scientific data.

(c) *City council.*

- (1) *Variances.* In addition to any and all other valid considerations and restrictions to the granting of variances under this Code and state law, the following additional restrictions shall apply to areas governed by this section. 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 regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- a. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - b. Variances shall only be issued by a community upon:
 1. A showing of good and sufficient cause;
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 3. A determination that the granting of a 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, or conflict with existing local laws or ordinances.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (2) *Decision to be mailed.* A copy of all decisions granting variances shall be forwarded by mail to the commissioner of natural resources within ten days of such action.
- (3) *Flood insurance notice and recordkeeping.* The zoning administrator 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 up to amounts as high as \$25.00 for \$100.00 of insurance coverage.
 - b. Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community 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.
 - c. Conditional uses. The city council shall hear and decide applications for conditional uses permissible under this article in the same manner and procedure as is otherwise provided. Except as otherwise provided, any conditional use permit granted by the city shall be in accordance with its standard procedures for the consideration, granting or denial of any such request.
 1. Hearings. Upon filing with the city council an application for a conditional use permit for a use or location within those areas governed by this section, the city council 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.
 2. Decisions. In granting a conditional use permit for a use or location within the floodplain, the city council shall prescribe appropriate conditions and safeguards, in addition to those specified in subsection (c)(3)c of this section which are in conformity with the purposes of this article. 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 article punishable under section 36-406. A copy of all decisions granting conditional use permits shall be forwarded by mail to the commissioner of natural resources within ten days of such action.
 3. Procedures to be followed by the city council in passing on conditional use permit applications within all floodplain districts.
 - (i) Require the applicant to furnish such of the following information and additional information as deemed necessary by the city council for determining the suitability of the particular site for the proposed use:
 - A. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, floodproofing measures, and the relationship of the above to the location of the stream channel; and

- B. Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.
- (ii) Transmit one copy of the information described in subsection (c)(3)c.3(i) of this section 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.
 - (iii) Based upon the technical evaluation of the designated engineer or expert, the city council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
4. Factors upon which the decision of the city council shall be based. In passing upon conditional use applications, the city council shall consider all relevant factors specified in other subsections of this article, and:
- (i) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - (ii) 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.
 - (iii) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (iv) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (v) The importance of the services provided by the proposed facility to the community.
 - (vi) The requirements of the facility for a waterfront location.
 - (vii) The availability of alternative locations not subject to flooding for the proposed use.
 - (viii) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (ix) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - (x) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (xi) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
 - (xii) Such other factors which are relevant to the purposes of this article.
5. Time for acting on application. The city council shall act on an application in the manner described above within 60 days from receiving a completed application, except for such additional time as it may be allowed, with notice, by law. Any application where additional information is required pursuant to subsection (c)(3)c of this section will be deemed incomplete on its face until such information is received by the city.
6. Conditions attached to conditional use permits. Upon consideration of the factors listed above and the purpose of this article, the city council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this article. Such conditions may include, but are not limited to, the following:
- (i) Modification of waste treatment and water supply facilities.
 - (ii) Period of use, occupancy, and operation.
 - (iii) Imposition of operational controls, sureties, and deed restrictions.
 - (iv) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

- (v) Floodproofing measures, in accordance with the state building code and this article. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

(Code 1997, § 1370.05(10))

Sec. 36-405. - Nonconforming uses.

A structure or the use of a structure or premises which was lawful before the passage or amendment of this article but which is not in conformity with the provisions of this article may be continued subject to the following additional conditions. Historic structures, as defined in section 36-396(h) shall be subject to the following provisions:

- (1) No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity, except as otherwise permitted or required by law.
- (2) Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the state building code, except as further restricted in subsections (3) and (5) of this section.
- (3) The cost of all 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 subsection are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of subsection (4) or (5) of this section for new structures depending upon whether the structure is in the floodway or flood fringe district, respectively.
- (4) If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this article. The assessor shall notify the zoning administrator in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.
- (5) If any nonconforming use or structure is substantially damaged, as defined in section 36-396(h), it shall not be reconstructed except in conformity with the provisions of this article. The applicable provisions for establishing new uses or new structures in subsection (4), (5) or (6) of this section will apply depending upon whether the use or structure is in the floodway, flood fringe, or general floodplain district, respectively.
- (6) If a substantial improvement occurs, as defined in section 36-396(h), from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of subsection (4) or (5) of this section for new structures, depending upon whether the structure is in the floodway or flood fringe district, respectively.

(Code 1997, § 1370.05(11))

Sec. 36-406. - Penalties for violation.

- (a) Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.
- (b) Nothing contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include, but are not limited to:
 - (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 correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

- (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 Agency regional office along with the community's plan of action to correct the violation to the degree possible.
- (3) The zoning administrator shall notify the suspected party of the requirements of this article and all other official controls and the nature and extent of the suspected violation of these controls. If the structure 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.
- (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 article and shall be prosecuted accordingly. The zoning administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this article.

(Code 1997, § 1370.05(12))

Sec. 36-407. - Amendments.

- (a) 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 regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the commissioner of natural resources if he determines that, through other measures, lands are adequately protected for the intended use.
- (b) All amendments to this article, 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 ten days written notice of all hearings to consider an amendment to this article and the notice shall include a draft of the ordinance amendment or technical study under consideration.

(Code 1997, § 1370.05(13))

Secs. 36-408—36-427. - Reserved.

DIVISION 5. - BLUFFLAND AREA OVERLAY DISTRICT

Sec. 36-428. - Findings.

The city finds that uncontrolled and inadequately planned use of wetlands, habitat areas, areas subject to soil erosion and areas containing restrictive soils adversely affects the public health, safety and general welfare by contributing to pollution and other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the city to provide adequate water, sewage, flood, fire protection and other

community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas which may be affected by unplanned land usage.

(Code 1997, § 1370.06(1))

Sec. 36-429. - Purpose and intent.

The purpose of this division shall be to promote, preserve and enhance the natural resources within the city and protect them from adverse effects occasioned by poorly sited or incompatible development by regulating developments that would have a severe adverse and potentially irreversible impact on unique and fragile environmentally sensitive land; by minimizing conflicts and encouraging compatibility between environmentally sensitive lands; and by requiring detailed review standards and procedures for developments proposed for such areas achieving a balance between urban growth and development and protection of natural areas.

(Code 1997, § 1370.06(2))

Sec. 36-430. - District boundaries and scope.

This overlay district shall apply to those areas zoned R-1 and R-2 as delineated on the official zoning map of the city. In addition to the above zoned parcels, this overlay district shall apply to those areas which lie above the indicated sea level elevations as outlined below, based on USGS datum. The requirements of this division shall be in addition to all requirements in the underlying zoning district.

- (1) Elevation 750 from the northerly municipal boundary to Ford Avenue;
- (2) Elevation 800 south of Ford Avenue to the southerly municipal boundary.

(Code 1997, § 1370.06(3))

Sec. 36-431. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bluffland area means the area which lies above USGS sea level elevation 750 from the northerly boundary and to Ford Avenue and the area which lies above USGS sea level elevation 800 south of Ford Avenue to the southerly municipal boundary.

Crown cover means the ratio between the amount of land shaded by the vertical projection of the branches and foliage area of standing trees to the total area of land, usually expressed as a percentage.

Dimensional requirement means minimum and maximum setbacks, yard requirements, or structure height or size restriction as set in this chapter for the underlying zoning district.

Erosion means the general process by which soils are removed by flowing surface or sub-surface water or wind.

Gross soil loss means the average annual total amount of soil material carried from one acre of land by erosion.

Lift station means a facility, usually including pumping facilities, for the lifting of sewage or stormwater runoff to a higher sewage facility or stormwater runoff facility.

Natural rate of absorption means the amount of stormwater absorbed into the soil during a storm of once in 20-year occurrence.

Pipeline means an underground line of pipe including associated pumps, valves, control devices, and other structures utilized for conveying liquids, gases, sewage or other finely divided solids from one point to another.

Retaining wall means a structure utilized to hold a slope in a position which it would not naturally remain in.

Sediment means suspended matter carried by water, sewage or other liquids.

Septic tank means any device for the treatment and disposal of human waster which utilizes the percolation of the liquid portion of the waste into the soil including all portions of the system which are not contained inside a building.

Sign, advertising, means a structure or portion thereof that is intended for advertising purposes on which letters, figures, or pictorial matters are or are intended to be displayed for advertising purposes, other than the name, occupation, or nature of the enterprise conducted on the premises. This term shall not be held to include a real estate sign advertising for sale or rent the property on which it stands.

Single-family dwelling means a building intended for human habitation by one family or not more than six unrelated people.

Slope means the inclination of the natural surface of the land from the horizontal.

Soil means the upper layer of earth which may be dug or plowed; the loose surface material of the earth in which vegetation normally grows.

Structure means anything manufactured, constructed, or erected which is normally attached to or positioned on land including portable structures.

Substation means any utility structure other than lines, pipelines, holes or towers.

Terrace means a relatively level area bordered on one or more sides by a retaining wall.

Tree means any woody plant that has at least one trunk whose diameter at four feet above ground is four inches or greater.

Utility facility means physical facilities of electric, telephone, telegraph, cable television, water, sewer, solid waste, gas, and similar service operations.

Vegetation means all plant growth, especially trees, shrubs, mosses and grasses.

Wetland means any land which is seasonably wet or flooded including all marshes, bogs, swamps, and floodplains.

(Code 1997, § 1370.06(4))

Sec. 36-432. - Scope and effect.

(a) *Applicability*. Site plans, prepared and approved in accordance with the provisions of this division, shall be required to assist the city in the review of specified applications for building permits, and to assure compliance with all applicable requirements of this division. Every applicant whose zoning matter or subdivision matter is referred to the city shall be required to submit an environmental site plan to the zoning administrator. No building permit, zoning approval or subdivision approval permit or certificate shall be issued for any action located in an area covered by this site planning division until site planning approval or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this division.

(b) *Exceptions*.

(1) An environmental site plan shall not be required for a single-family dwelling constructed by the intended residents nor for extension, enlargements, additions, changes or alterations thereto nor accessory structures thereto.

(2) No site plan shall be required for any use permitted on a temporary basis for a period not to exceed two years which such use is established without site preparation and makes no discharge onto the site.

(3) The board of appeals and adjustments, upon recommendation of the zoning administrator, may waive any requirement of this section upon making a finding that the waiver of such requirement shall not adversely affect the standards and requirements set forth in this chapter. The board of appeals and adjustments may require as a condition of such waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the standards and requirements. Any decision of the board of appeals and adjustments may be modified, reversed, or affirmed by the city, upon appeal by any person aggrieved by the decision, the appeal shall be filed within ten days of the decision.

(Code 1997, § 1370.06(5))

Sec. 36-433. - Site plan approval procedure.

(a) *Application.*

- (1) A written application for site plan approval shall be filed with the zoning administrator and shall include a statement indicating the grounds upon which the permit is requested, that the proposed use shall be permitted by right or an exception in the underlying zoning district, and adequate evidence showing that the proposed use shall conform to the standards set forth in this division.
- (2) Ten sets of clearly legible blue or black lined copies of drawings and required information shall be submitted to the city council and shall be accompanied by a receipt from the city clerk-administrator evidencing the payment of all required site plan fees for processing and approval as set forth in this division and a bond when required by this chapter in the amount to be calculated in accordance with this division.

(b) *Site plan contents.*

- (1) Site plans shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed, which shall not be greater than one inch equals 20 inches, or less than one inch equals 100 feet.
- (2) The following information shall be provided in the site plan:
 - a. Location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, subdivisions, towns and districts or other landmarks.
 - b. The name and address of the owner or developer, the section, township and range, north point, date and scale drawing number of sheets. In addition, a blank space three inches wide and three inches high shall be reserved for use by the approving authority.
 - c. Existing topography with a contour interval appropriate to the topography of the land but in no case having a contour interval greater than two feet; the topography map shall also clearly delineate any bluffline, all streams, including intermittent streams and swales, water bodies, wetlands and vegetation on the site.
 - d. Proposed finished grading shown at contours at the same interval as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features.
 - e. A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size, and description of all existing vegetation, clearly delineating any vegetation proposed for removal and clearly delineating and describing all proposed landscape materials which will be added to the site as part of the development.
 - f. A drainage plan of the site delineating in which direction and at what rate stormwater is conveyed from the site and setting forth those areas of the unaltered site where stormwater collects and is gradually percolated into the ground.
 - g. A proposed drainage plan of the developed site delineating in which direction and at what rate stormwater will be conveyed from the site and setting forth the areas of the site where stormwater shall be allowed to collect and gradually percolate into the ground.
 - h. A description of the soils of the site, including a map indicating soil types of areas to be disturbed as well as a soil report containing information on the suitability of the soils for the type of development proposed and for the type of sewage disposal proposed and describing any remedial steps to be taken by the developer to render the soils suitable.
 - i. An erosion and sedimentation control plan indicating the type, location, and necessary technical information on control measures, as well as a statement on the anticipated gross soil loss (expressed in tons/acre/year) during and after construction.
 - j. A description of the flora, fauna, fish, birds and mammals or other wildlife which occupy the site or are occasionally found thereon, setting forth with detail those areas where unique plant and animal species may be found on the site.
 - k. A description of any features, buildings, or areas which are of historical significance.

- l. The proposed size, alignment and intended use of any structures to be erected on the site.
 - m. A clear delineation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used.
 - n. A description of the method to be provided for vehicular and pedestrian access to the proposed development.
 - o. A description of all parking facilities to be provided as part of the development of the site including an analysis of parking needs generated by the proposed development.
 - p. A delineation of the area or areas to be dedicated for public use.
 - q. A delineation of the location and amounts of excavated soils to be stored on the site during construction.
 - r. Any other information pertinent to the particular project which in the opinion of the inspector or applicant shall be necessary or helpful for the review of the project.
- (c) *Site plan review procedure.* Site plans meeting the requirements of this chapter shall be submitted to the planning commission for review in accordance with the standards of this section. The commission shall grant or deny site plan approval by a resolution which shall be filed with the city clerk-administrator.
- (1) *Expiration, extension and revisions.*
 - a. Approval of a site plan submitted under the provisions of this division shall expire one year after the date of approval unless construction has commenced in accordance with the approved site plan.
 - b. Should construction not be commenced as specified in this division, approval shall become void; provided, however, that if prior to the date established for expiration of the permit, the permittee makes a written request to the city for an extension of time to commence construction setting forth the reasons for the requested extension, the city council may grant one extension of not greater than one single year.
 - c. Any request for an extension shall be acknowledged within 15 days and a decision made in that regard within 30 days of receipt by the planning commission.
 - d. Any site plan may be revised in the same manner as originally approved.
 - (2) *Conditions.* A site plan may be approved subject to compliance with conditions reasonable and necessary to insure compliance with the requirements contained in this division. Such conditions may, among other matters limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, state the work over time, require the alteration of the site design to insure buffering, and require the conveyance to the local governmental unit or other public entity of certain lands or interests.
 - (3) *Performance bond.*
 - a. Prior to approval of any site plan, there shall be executed by the owner and developer and submitted with the site plan an agreement to construct the required physical improvements, to declare the property or easements, and to comply with the conditions as may have been agreed to. The agreement shall be accompanied by a bond with surety or condition acceptable to the city council in the amount of the established cost of complying with the agreement.
 - b. The agreement and performance bond required by subsection (c)(3)a of this section shall be provided for guaranteeing completion and compliance with conditions within the time to be approved by the city council, which time may be extended in accordance with section.
 - c. The adequacy, conditions, and acceptability of any bond under this division shall be determined by the city council or any official of the city as may be designated by resolution of the city council.
 - (4) *Appeals.* Appeal from a decision of the planning commission approving, disapproving, establishing conditions or setting the bond requirement, may be taken to the city council within ten days after the decision is filed with the zoning administrator. The appeal shall be filed in writing specifying where there was an error in the decision of the planning commission. The appeal, if timely filed, automatically stays proceedings in the matter until a final determination is made by the board. The planning commission shall transmit to the board a copy of its decision and findings, and all other maps, plans and exhibits relating to its decision. After hearing the appeal, the council

may, by resolution filed with the zoning administrator, affirm, modify in whole or part, or reverse the approval of the planning commission. The decision shall contain concurrent findings of fact showing whether the proposed development meets or fails to meet the site plan requirements set forth in this division and the standards delineated in section in approving or modifying the approval of a site plan, the city council may impose such conditions as it shall deem necessary and desirable to protect the public health, safety and welfare and to promote and achieve the intent and purpose of this section.

- (5) *Fees.* A schedule of fees for the examination and approval of site plans and the inspection of all required improvements and conditions in such plans shall be determined by resolution of the city council, which may from time to time change the schedule. Prior to approval of any site plan, the fee shall be paid to the zoning administrator and be deposited to the credit of the general fund.
- (d) *Site plan approval standards.* No site plan which fails to satisfy the following standards shall be approved by the planning commission:
- (1) The applicant shall demonstrate that the proposed development shall be planned, designed, constructed and maintained to avoid substantial probabilities of:
 - a. Accelerated erosion.
 - b. Pollution contamination, or siltation of water bodies, rivers and streams.
 - c. Damage to vegetation.
 - d. Injury to wildlife habitats.
 - e. Increased flood potential.
 - f. Decreased groundwater recharge.
 - (2) The applicant shall demonstrate that the types and densities of land use proposed shall be suited to the site and soil conditions and shall not present a threat to the maintenance of the groundwater quality, a potential increase in maintenance cost of utilities, parking areas, or roads, and shall not be subject to problems due to soil limitations, including, but not limited to, soil bearing strength, shrink/swell potential, and excessive frost movement.
 - (3) No development shall be permitted on land having a slope before alteration in excess of 12 percent unless the applicant shall prove that the following conditions shall have been met:
 - a. The foundation and underlying material of any structure, including roads, shall be adequate for the slope condition and soil type.
 - b. Adequate controls and protections exist uphill from the proposed development such that there shall be no danger of structures or roads being struck by falling rock, mud, uprooted trees, or other materials.
 - c. The proposed development shall present no danger of falling rock, mud, uprooted trees, or other materials to structures downhill.
 - d. The view of the developed slope from the river and opposite riverbank shall be consistent with the natural appearance of the undeveloped slope, consistent with any historic areas nearby, compatible with the view from historic areas, and compatible with surrounding architectural features. To the maximum extent possible, the use of natural devices, including vegetation management shall be preferred over the construction of artificial devices, including culverts, holding ponds, walls and terracing.
 - e. All structures other than buildings and roadway surfaces, but including retaining walls shall meet the following design requirements:
 1. Retaining walls or terrace contours shall not exceed five feet in height;
 2. Construction shall be of native stone, wood, or cast in place concrete.
 - f. Any lift stations required to service the slope development with local sewer systems shall be designed in accordance with local design standards and approved by the city engineer. The applicant shall furnish a satisfactory arrangement or agreement by which the cost of maintenance and operation of the lift station are borne by those serviced by the facility.

- g. No septic tank shall be placed on a slope of greater than 12 percent. The natural slope shall not be altered in any way where the septic tank system or part thereof is to be located. The drain lines shall be located parallel to contour lines. No on-site sewer system shall be permitted on a parcel that is less than three acres in size.
 - h. In no case shall slopes with a natural slope in excess of 45 percent be developed without submission of a detailed set of construction documents, under the direction of a licensed architect and certified by the architect.
- (4) During construction and until such time as final control measures are fully implemented and established, adequate development practices shall be maintained to insure that gross soil loss levels (expressed in terms per acre per year) shall not exceed two tons per acre per year during construction and one-half tone per acre per year after the construction activities are completed as calculated in accordance with the uniform soil loss equation, section 36-369.
 - (5) Development shall not substantially diminish the scientific, historical, education, recreational or aesthetic value of natural areas and unique plan and animal species, and shall not substantially alter the supporting environment necessary for food supply and the reproductive cycle of the species.
 - (6) Erosion protection measures shall make maximum use of natural in-place vegetation rather than the placing of new vegetation on site as erosion control facilities. The use of natural erosion control devices shall be preferred to the maximum extent over the construction of artificial drainage devices including culverts, holding ponds, and ditches.
 - (7) The development shall be located in such a manner as to minimize the removal of vegetation and alteration of the natural topography.
 - (8) The applicant shall demonstrate that there are no feasible or prudent alternatives to cutting trees on the site; development shall be permitted only in such a manner that the maximum number of trees shall be preserved. No trees may be cut except those occupying the actual physical space in which a structure, drive or roadway is to be erected. In the event that solar collection is utilized, trees may be cut to allow sufficient sunlight to the solar collectors if the applicant can demonstrate there are no feasible or prudent alternatives. If trees are cut, the density of trees shall be restored to that which existed before development, but in no case shall the applicant be required to raise the density above ten trees per acre. The applicant shall demonstrate that all grading which takes place shall be conducted in a manner that preserves the root zone aeration and stability of existing trees and provides an adequate watering area equal to at least one-half of each tree's crown cover.
 - (9) Development in woodlands shall not reduce the existing crown cover greater than 50 percent and shall be conducted in such a manner that the understory and litter shall be preserved.
 - (10) Filling in wetland shall not exceed the excess storage and nutrient stripping capacities of the wetland based on the ultimate projected development of the wetland watershed.
 - (11) Wetlands and other water bodies shall not be used as primary sediment traps during or after construction.
 - (12) The proposed development shall not increase the runoff rate or decrease the natural rate of absorption of stormwater.
 - (13) The quality of water runoff and water infiltrated to the water table or aquifer shall be as high after development as it was before development of the site.
 - (14) When filling in a wetland, a minimum amount of filling may be allowed when necessary but in no case shall the following restrictions on total amount of filling be exceeded. Since the total amount of filling which can be permitted is limited, the city, when considering permit applications shall consider the equal apportionment of fill opportunity to riparian land owners.
 - a. Total filling shall not cause the total natural flood storage capacity of the wetland to fall below the projected volume of runoff from the whole developed wetland watershed generated by a six inches rainfall in 24 hours. Any increase in runoff shall be detained for on-site infiltration through the soil to the water table.
 - b. Total filling shall not cause the total natural nutrient stripping capacity of the wetland to fall below the nutrient production of the wetland watershed for its projected development.

- c. Only fill free of chemical pollutants and organic wastes shall be used.
- (15) No part of any septic tank system shall be located closer than 150 feet from the edge of a water body or watercourse unless it can be shown that no effluent shall directly or indirectly reach the water body, watercourse or wetland.
- (16) The development shall be consistent with the reasonable preservation of the view of the river corridor from other properties.
- (17) The grades of any streets shall not exceed ten percent.
- (18) Any and all erosion control, stormwater runoff, utility access, and similar structures shall be designed to be maintained, cleaned out, and otherwise operated without requiring the crossing of private land without the operation of motorized heavy maintenance vehicles and equipment, such as bulldozers, trucks, and back-hoes, on slopes in excess of eight percent. As used in this section, private lands include any out-lots.
- (19) The proposed development, both vehicular and pedestrian, shall be adequate and consistent with local transportation and thoroughfare planning.
- (20) The proposed development shall not lessen public access to and along the bluffland, nor shall it lessen public opportunity to view the bluff from the valley below.
- (21) The conduct of all grading, landscaping, structure placement, and street routing shall be consistent with and to the maximum extent in furtherance of the goals and policies for the development of the city development guide plan adopted by the city.

(Code 1997, § 1370.06(6))

Sec. 36-434. - Bluffland area crossings.

- (a) *Utility facilities.* Utility crossings in the critical area corridor or routing within the corridor shall meet the following standards:
 - (1) *Underground placement.* Underground placing of the utility facility shall be required unless economic, technological and land characteristic factors make underground placement feasible. Economic considerations alone shall not be made the major determinate regarding feasibility.
 - (2) *Overhead crossings.* Overhead crossings, if required, shall meet the following criteria:
 - a. The crossings shall be adjacent to or part of an existing utility corridor, including bridge or overhead utility lines.
 - b. All structures utilized shall be as compatible as practicable with land use, scenic views, and existing transmission structures in height, material, color, and design.
 - c. Right-of-way clearance shall be kept to a minimum.
 - d. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements.
 - e. Routing shall avoid unstable soils, blufflines, or high ridges, the alteration of the natural environment, including grading shall be minimized.
 - f. The crossing shall be subject to the site planning approval standards set forth in this section.
- (b) *Utility substations.* Utility substations shall be subject to the following standards:
 - (1) All substations shall be subject to the site planning approval standards set forth in this section.
 - (2) New substations or refurbishment of existing substations shall be compatible in height, scale, building materials, landscaping and signing with the surrounding natural environment or land uses. Screening by natural means shall be encouraged and shall be compatible with the surrounding environment.
- (c) *Pipelines.* Pipelines and underground utility facilities shall be subject to the following standards:
 - (1) All pipelines and underground facilities shall be subject to the site planning approval standards set forth in this section.

- (2) The facilities shall be located to avoid wetlands, woodlands, and areas of unstable soils.
- (3) All underground placing of utility facilities and pipelines shall be followed by revegetation and rehabilitation to the conditions which existed on site prior to development providing the original conditions were environmentally and aesthetically desirable.
- (d) *Public and private roads.* New roads crossing the critical area corridor or routed within the critical area corridor shall meet the following standards:
 - (1) Roads shall be constructed to minimize impacts on the natural terrain and natural landscape.
 - (2) Extreme cuts and fills shall be avoided.
 - (3) All roads shall be subject to the site planning approval standards set forth in this section.
 - (4) New roads shall not utilize the river corridor as a convenient right-of-way for new arterials.
 - (5) New roads shall be restricted to those facilities needed to access existing and planned residential uses.
- (e) *Existing structures.* Existing structures, the location, or the use of which is inconsistent with this subsection, shall not be eligible for any permit granted by the city for expansion, change of use, renewal of existing permit, or building permit, unless the following criteria shall be met:
 - (1) The applicant shall provide and maintain adequate screening of the structure from the water through the use of natural vegetative means.
 - (2) The public's ability to view the bluff from existing public streets shall not be further degraded by the proposed activity.

(Code 1997, § 1370.06(7))

Sec. 36-435. - On-site sewer disposal.

- (a) *Purpose and intent.* The following regulations are adopted for the purpose of:
 - (1) Regulate individual sewer disposal systems so as to prevent contamination of underground bodies of water, streams or other bodies of water.
 - (2) Prevent individual sewer disposal systems from creating a health hazard or a nuisance for the general public or for individuals.
- (b) *General requirements.*
 - (1) Location and installation of the individual sewage disposal system and each part thereof shall be such that with reasonable maintenance it shall function in a sanitary manner and shall not create a nuisance nor endanger the safety of any domestic water supply. In determining a suitable location for the system, consideration shall be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, depth of ground water, geology, proximity to existing or future water supplies, accessibility for maintenance, and possible expansion of the system.
 - (2) No part of the system shall be located so that it is nearer to any water supply, or so that surface drainage from its location may reach any domestic water supply.
 - (3) Raw sewage, septic tank effluent, or seepage from a soil absorption system shall not be discharged to the ground surface, abandoned wells or bodies of surface water, or into any rock formation the structure of which shall not be conducive to purification of water by filtration, or into any well or other excavation in the ground. This requirement shall apply to the disposal of sewage in accordance with a process approved by the state board of health or the water pollution control commission.
 - (4) The lot size shall be three acres minimum in size to permit installation of the individual sewage disposal system in accordance with all the requirements pertaining thereto.
 - (5) Installation of individual sewage disposal systems shall not be made in low swampy areas or areas which may be subject to flooding.

- (6) In areas with a high groundwater table or where limestone or any geological formation similarly faulty is covered by less than 50 feet of earth, the final disposal unit shall be a tile field. The bottom of the trenches shall not be less than four feet above the highest known or calculated water table or the surface of the faulty rock formation.
 - (7) Bulldozers, trucks or other heavy machinery shall not be driven over the system after installation.
 - (8) The system or systems shall be designed to receive all sewage from the dwelling, building or other establishment served, including laundry waste and basement floor drainage. Footing or roof drainage shall not enter any part of the system. Where the construction of additional bedrooms, the installation of mechanical equipment, or other factors likely to affect the operation of the system can be reasonably anticipated, the installation of a system adequate for such anticipated need shall be required.
 - (9) The system shall consist of a building sewer, a septic tank, and a soil absorption unit. The soil absorption unit shall consist of a sub-surface disposal field. All sewage shall be treated in the septic tank and the septic tank effluent shall be discharged to the disposal field. The septic tank drain field system shall be considered the only acceptable system for installation unless it can be demonstrated that this system is not feasible on the particular lot in question and if it can be demonstrated that the system being proposed as an alternate shall not create a pollution problem.
 - (10) Soil absorption systems for the disposal of sewage waste shall not be installed on land where the slope exceeds 12 percent.
 - (11) The system or systems shall be subject to approval by the city engineer. No permits shall be granted by the building inspector until a report has been filed by the city engineer. All regulations of this section shall be in addition to and not in lieu of regulations imposed by the pollution control agency or other state regulation regarding individual sewage treatment standards.
- (c) *Maintenance requirements.*
- (1) At least once a year the owner of any septic tank or his agent shall measure or arrange for measurement of the depth of sludge and scum in the septic tank. When, as a result of the measurement the top of the sludge layer in the tank or any compartment of the tank is found to be less than 12 inches below the bottom of the outlet baffle or submerged pipe, or if the bottom of the scum layer is less than three inches above the bottom of the septic tank outlet baffle or submerged pipe, the owner or agent shall arrange for the removal and sanitary disposal of sludge and scum from the tank; provided that the requirement for measuring shall be waived for any septic tank which is cleaned as indicated at least once each calendar year.
 - (2) At least once each year, the owner of any system equipped with a distribution box shall arrange for the opening of the distribution box and the removal of any settled solids. The material shall be disposed of to the septic tank or by other means acceptable to the zoning administrator.
 - (3) At least once between May 1 and June 30 of each year, the depth of liquid in each seepage pit shall be measured. When, as a result of the measurement it is found that the liquid level in the pit is less than one foot below the inlet, a second measurement shall be made eight to 12 hours after the first measurement, during which time no liquid shall be discharged into the seepage pit. If, as a result of the second measurement, it is found that the liquid level in the pit has not lowered at least two feet during the indicated period of time, an additional seepage pit or other acceptable soil absorption system shall be provided.
 - (4) Servicing of septic tanks and soil absorption units shall conform to the state department of health and the state pollution control agency specifications. disposal of sludge and scum removed from the system shall be:
 - a. Into a municipal sewer disposal system where practicable.
 - b. In the absence of a public sewer, at a disposal site approved by the zoning administrator.
 - c. Sludge shall not be discharged into any lake or water-course nor upon land without burial.
- (d) *Alternative systems.* Alternative methods of sewage disposal such as holding tanks, electric or gas incinerators, biological or tertiary treatment plants or land disposal systems, wherever required or allowed in particular circumstances, shall be subject to the standards, criteria, rules and regulations of the state department of health and state pollution control agency.

(Code 1997, § 1370.06(10))

Secs. 36-436—36-450. - Reserved.

DIVISION 6. - CONSERVATION RESIDENTIAL OVERLAY DISTRICT

Sec. 36-451. - Findings.

The city finds that the lands and resources within the Conservation Residential Overlay District are a unique and valuable resource to the community. The prevention of irreversible damage to the bluffs, woodlands and other resources, and preservation and enhancement of its natural, aesthetic, cultural and historical values will further the health, safety, and general welfare of the city.

(Code 1997, § 1370.08(1))

Sec. 36-452. - Purpose and intent; objectives.

- (a) *Purpose and intent.* The Conservation Residential Overlay District is established to protect the bluffs, woodlands and other resources of the district by allowing the development of Conservation Residential Subdivisions (CRS) on parcels that are not served by municipal sanitary sewer services, while, providing for the protection of ecologically significant areas, natural landscapes, scenic attributes, open space, and cultural features, and as an alternative to standard single-family residential plats in the district.
- (b) *Objectives.* The objectives of this district are to:
- (1) Preserve natural resources as identified in the comprehensive plan.
 - (2) Preserve permanent natural habitat and vegetated corridors for the movement of wildlife.
 - (3) Provide commonly owned open space areas and trails for passive or active recreational use by residents of the development and where specified, the larger community
 - (4) Provide for efficient use of the land while maintaining contiguous blocks of mature woodlands, open space, natural habitat and corridors, scenic views, natural drainage systems, and other desirable features of the natural environment.
 - (5) Encourage innovation and promote flexibility, economy and creativity in residential development.

(Code 1997, § 1370.08(2), (3))

Sec. 36-453. - Establishment.

A Conservation Residential Overlay District with its attendant regulations shall be established as part of the zoning regulations of the city. This district shall overlay the existing Residential Estates (RE) Zoning District so that any parcel of land lying in the overlay district shall also lie in the underlying established zoning district. If municipal sewer services are provided to a parcel in the RE District for development at R-1 or higher densities, it shall no longer be included in the CRSOD. Territory within the overlay district shall be subject to the requirements established in this division, as well as restrictions and requirements established by other applicable sections, chapter 28 (subdivisions), and other ordinances and regulations of the city. Within the overlay district, all uses shall be permitted in accordance with the regulations for the underlying zoning district; provided, however, that such uses shall not be entitled to or issued the appropriate development permit until they have first satisfied the additional requirements established in this section.

(Code 1997, § 1370.08(4))

Sec. 36-454. - District boundaries.

This section shall apply to the CRSOD which shall be specially delineated on the official zoning map of the city for purposes of determining the application of this division to any particular parcel of land. The above-referenced map shall be on file in the office of the zoning administrator and shall be available for inspection and copying.

(Code 1997, § 1370.08(5))

Sec. 36-455. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Community garden means land which is cultivated by the residents of the development for the production of trees, vegetables, fruits, flowers, herbs and grasses for the residents' use.

Conservation easement means an interest in real property created in a manner that imposes limitations or affirmative obligations in regard to the use of property including the retention, protection and maintenance of natural resource and open space.

Conservation residential subdivision means a grouping of residential structures on smaller lots than allowed in the RE Zoning District, leaving some land dedicated as open space for the protection of ecologically significant areas, natural landscapes, scenic attributes, open space and cultural features.

Cultural resource means the historic and archeological characteristics of the land, including buildings and landscapes, which provide information regarding the history of the city and its people.

Homeowners' association means a formally constituted nonprofit association or corporation made up of the property owners or residents of the development for the purpose of owning, operating and maintaining common open space and facilities.

Neighborhood means an area containing a contiguous group of residential lots where people live in close proximity to one another.

Open space means land used for agriculture, natural habitat, pedestrian corridors or recreational purposes, that is undivided and permanently protected from future development.

Perimeter road means a road lying outside of and abutting the development parcel.

Plant community means a grouping of plants with common environmental requirements living within the landscape (i.e., wetlands, grasslands, woodlands).

Protective or restrictive covenant means a contract entered into between private parties that constitutes a restriction of the use of a particular parcel of property.

Resource inventory means a survey of the land's features, including its natural resources, cultural resources, scenic views and physical characteristics.

(Code 1997, § 1370.08(6))

Sec. 36-456. - Applicability.

The CRS standards are an alternative set of standards for residential development within the RE (Residential Estate) District. CRS shall be permitted on parcels that are not serviced by municipal sewer services with a conditional use permit within that district.

(Code 1997, § 1370.08(7))

Sec. 36-457. - Application procedure.

All procedures for a standard subdivision as provided in chapter 28, subdivisions, shall be followed for a CRS. A conditional use permit is required for a CRS. In addition, the application process and requirements for CRS include the following:

Sec. 36-485. - Process for approval of redevelopment plans.

Plans for each new use or redevelopment project or combination of projects in the River Redevelopment Overlay District must be submitted to the city administrator for concept plan review. Site plan approval is required for all new construction in the River Redevelopment Overlay District. Applications and process for site plan approval shall follow the requirements for site plan approval identified in section 36-51.

(Code 1997, § 1370.09(9))

Secs. 36-486—36-508. - Reserved.