

CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA  
ORDINANCE 80-84

AN ORDINANCE ADDING SECTION 303.020 C. 3. AND SECTION 303.100 B, AND  
AMENDING SECTION 303.050 E.2. AND SECTION 303.080 C. OF THE 1979 LAKE  
ELMO MUNICIPAL CODE AS IT RELATES TO FLOODPLAIN REGULATIONS

The City Council of the City of Lake Elmo ordains:

**SECTION 1. AMENDMENT:** Section 303.020 C.3. and Section 303.100 B. are hereby added to the 1979 Municipal Code of the City of Lake Elmo; and Section 303.050 E.2. and Section 303.080 C. hereby amended the 1979 Municipal Code of the City of Lake Elmo all relating to Floodplain Regulations, and will read as follows:

**Section 303.020 C.3.** Permitted and conditional uses allowed in the floodplain shall be limited to those only listed in Section 303.050, and only under the standards and conditions which are also stated herein. Where it is alleged that there is an error in any order, requirement, decision or determination made by the Zoning Administrator, an appeal may be made to the Board of Adjustment and Appeals who shall follow the rules and procedures of Section 303.080 in making their final decision.

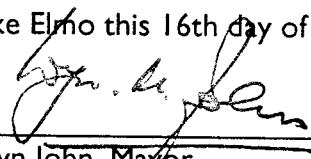
**Section 303.050E.2.** Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than four feet per second upon occurrence of the regional flood.

**Section 303.080 C. Decisions:** A Board decision and their findings shall be made according to Section 301.060 C.4. and 5. In granting a Variance the Board may prescribe appropriate conditions and safeguards which are in conformity with the purposes of the Floodplain Regulation. Violations of such conditions and safeguards, when made part of the terms under which the Variance is granted, shall be deemed a violation of the Floodplain Regulation punishable under Section 303.110. No Variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the Regulatory Flood Protection Elevation. Variances may be used to modify permissible methods of flood protection.

**Section 303.100 B.** The cost of all structural alterations or additions both inside and outside of a structure 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 and additions constructed since the adoption of Lake Elmo's initial flood plain 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 Section 303.050.

**SECTION 2. EFFECTIVE DATE:** This ordinance shall become effective the day following its publication.

Adopted by the City Council of the City of Lake Elmo this 16th day of February, 1993.

  
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Wyn John, Mayor

Attest:

  
\_\_\_\_\_  
Mary Kueffner, City Administrator

Published in the Stillwater Gazette on the 24th day of February, 1993.

## **FLOODPLAIN MANAGEMENT ORDINANCE**

### **SECTION 303.010 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE**

A. Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and 462.357 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Lake Elmo, Minnesota does ordain as follows:

B. Findings of Fact:

1. The flood hazard areas of Lake Elmo, 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.

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.

C. Title: The provisions of Lake Elmo code Sections 303.010 through 303.120 and amendments thereto shall be referred to as the Floodplain Regulation.

D. Statement of Purpose: It is the purpose of the Floodplain Regulation to promote the public health, safety, and general welfare and to minimize those losses described in Section 303.010 B. by provisions contained herein.

### **SECTION 303.020 GENERAL PROVISIONS**

A. Lands to Which Ordinance Applies: The Floodplain Regulation shall apply to all lands within the jurisdiction of the City of Lake Elmo shown on the City's Flood Boundary and Floodway Map and the Flood Insurance Rate Map dated July 2, 1979 (hereinafter "Official Maps") as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts. These Official Maps are hereby adopted by reference and declared to be a part of the Floodplain Regulation.

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

C. Interpretation:

1. In their interpretation and application, the provisions of the Floodplain Regulation shall be held to be minimum requirements and shall be liberally construed in favor of the City of Lake Elmo and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.
2. Where interpretation is needed as to the exact location of the boundary of the floodplain district as shown on the Official Maps, 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-year) 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.
- \* 3. Permitted and conditional uses allowed in the floodplain shall be limited to those only listed in Section 303.050, and only under the standards and conditions which are also stated herein. Where it is alleged that there is an error in any order, requirement, decision or determination made by the Zoning Administrator, an appeal may be made to the board of Adjustment and Appeals who shall follow the rules and procedures of Section 303.080 in making their final decision.  
\*(Amended by Ord. 80-84, February 16, 1993.)

D. Abrogation and Greater Restrictions: The provisions of the Floodplain Regulation are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where the Floodplain Regulation imposes greater restrictions, the provisions of the Floodplain Regulation shall prevail. All other Ordinances inconsistent with the Floodplain Regulation are hereby repealed to the extent of the inconsistency only.

E. Warning and Disclaimer of Liability: The Floodplain Regulation does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. The Floodplain Regulation shall not create liability on the part of the City of Lake Elmo or any officer or employee thereof for any flood damages that result from reliance on the Floodplain Regulation or any administrative decision lawfully made thereunder.

F. Severability: If any section, clause, provision, or portion of the Floodplain Regulation is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Floodplain Regulation shall not be affected thereby.

## SECTION 303.030 DEFINITIONS

Unless specifically defined below, words or phrases used in this Section shall be interpreted so as to give them the same meaning as they have in common usage and so as to give the Floodplain Regulation its most reasonable application. In the event that a definition in Section 301.040 is different than the definition herein, the definition found in this Section shall apply.

Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

Conditional Use - means a specific type of structure or land use listed in this ordinance that may be allowed, but only after an in-depth review procedure, and with appropriate conditions or restrictions as provided in Section 301.060 C. of the City Code.

Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Finished Fill - means soil compaction area and the final grade outside the wall and foundation of a structure.

Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equalled or exceeded.

Flood Fringe - that portion of the floodplain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for the City of Lake Elmo.

Floodplain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional 100-year flood.

Flood-Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, water-course, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

Principal Use or Structure - means all uses or structures that are not accessory uses or structures.

Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

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

Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes and other similar items.

Variance - means a modification of a specific permitted development standard required in this ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship as defined in Section 301.060 C. Economic considerations alone shall not constitute a hardship.

#### SECTION 303.040 ESTABLISHMENT OF FLOODPLAIN DISTRICT

A. Designation of the Floodplain District: The Flood Insurance Study for the City of Lake Elmo prepared by the FEMA and dated January, 1979 and the Flood Boundary and Floodway Map and Flood Insurance Rate Map, both dated July 2, 1979 (hereinafter referred to as the "Official Maps") contained therein are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study shall be on file in the office of the City Clerk. The Floodplain District for the City of Lake Elmo shall include those areas which lie within the 100-year Flood Boundary on the Flood Insurance Rate Map dated July 2, 1979.

B. 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 the Floodplain Regulation and other applicable regulations which apply to uses within the jurisdiction of the Floodplain Regulation. In addition, a caution is provided here that:

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 the Floodplain Regulation and specifically Section 303.100; and

2. As-built elevations for elevated or flood-proofed structures must be certified by a registered professional engineer or architect as specified in the general provisions of the Floodplain Regulation and specifically as stated in Section 303.070.

#### SECTION 303.050 FLOODPLAIN DISTRICT

A. Permitted Uses: The following uses have a low flood damage potential and do not obstruct flood flows. These uses shall be permitted to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. In addition, no use shall adversely affect the capacity of the channels or floodways or any tributary to the main stream or of any drainage ditch, or any other drainage facility or system.

1. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.

2. Private and public recreational uses such as golf courses, tennis courts, golf driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming area, parks, wildlife and nature preserves hunting and fishing area, and single or multiple purpose recreational trails.

3. Residential uses such as lawns, gardens, parking area, and play areas.

B. standards for Floodplain Permitted Uses:

1. The use shall have a low flood damage susceptibility.

2. The use shall be permissible in the underlying zoning district.

3. 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.

4. New or replacement on-site sewage treatment systems must be designed to eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment of contamination during times of flooding. Any sewage treatment system designed in accordance with the City's and State's current state-wide standards whichever is more restrictive for on-site sewage treatment systems shall be determined to be in compliance with this Section.

C. Conditional Uses:

1. Railroads, bridges, utility transmission lines, and pipelines.

2. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and 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.

3. Alterations and/or additions to existing principal structures, located in the flood fringe portion of the flood plain district which are 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 the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon. Such construction must comply with the requirements of Section 303.050.D.

D. Standards for Floodplain Conditional Uses:

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 Conditional Use that will cause any increase in the stage of the (100-year) regional flood or cause an increase in flood damages in the reach or reaches affected.

2. All floodplain Conditional Uses shall be subject to the procedures and standards contained in Section 303.090.

3. The Conditional Use shall be permissible in the underlying zoning district.

4. Structural works for flood control that will change the course, current or cross section of 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 floodway.



5. 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, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted. The plan must be prepared and certified by a registered professional engineer.

E. Standards for All Floodplain Uses:

1. All new principal structures must have vehicular access at or above 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 time of flooding.

- \* 2. 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 greater than four feet per second upon occurrence of the regional flood.

\*(Amended by Ord. 80-84, February 16, 1993.)

3. Fill shall be properly compacted and the slopes shall be properly protected by the use of rip-rap, 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. All dwelling units must be at least twenty (20) feet wide through the main living area of the structure. The structure must have continuous frost footings. Continuous frost footings are not required for porches, decks, and other appendages so long as proper post type footings per existing building codes are constructed.

6. Travel trailers, travel vehicles, and manufactured homes are prohibited in the floodplain district.

## SECTION 303.060 PUBLIC UTILITIES, RAILROADS, 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 flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.
- B. Public Transportation Facilities: Railroad tracks, and bridges to be located within the floodplain shall comply with Section 303.050. 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. Limited access 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 eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to eliminate infiltration of flood waters into the systems 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 City's and State's current state-wide standards whichever is more restrictive for on-site sewage treatment systems shall be determined to be in compliance with this Section.

## SECTION 303.070 ADMINISTRATION

- A. Zoning Administrator: A Zoning Administrator or other official designated by the City of Lake Elmo shall administer and enforce the Floodplain Regulation. If the Zoning Administrator finds a violation of the provisions of the Floodplain Regulation, the Zoning shall notify the person responsible for such violation in accordance with the procedures stated in Section 303.100.
- B. Permit Requirements: A Permit issued by the Zoning Administrator in conformity with the provisions of the Floodplain Regulation 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 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.

C. 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 floodplain.

D. 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.

E. Certificate of Occupancy for a New, Altered, or Nonconforming Use: It shall be 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 Occupancy shall have been issued by the Zoning Administrator indicating that the use of the building or land conforms to the requirements of the Floodplain Regulation.

F. Construction and Use to be as Provided on Application, Plans, Permits, Variances and Certificates of Occupancy: Permits, Conditional Use Permits, or Certificates of Occupancy 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 the Floodplain Regulation, and punishable as provided by Section 303.110.

G. 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.

H. 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 flood-proofed.

I. Subdivisions: 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 the Floodplain Regulation and have road access both to the subdivision and to the individual building sites no lower than 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 labelled on all required subdivision drawings and platting documents. For all residential structures in the floodplain, the floodway and the flood fringe boundaries, the basement construction, or the lowest floor if there is no basement, shall not be allowed below the Regulatory Flood Protection Elevation.

#### SECTION 303.080 BOARD OF ADJUSTMENT AND APPEALS

A. Rules: The Board of Adjustment and Appeals shall have rules and power conferred in Section 301.060 C.

B. Hearings: The Board of Adjustment shall follow the hearing procedures of Section 301.060 C.4. The Board shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

\* C. Decisions: A Board decision and their findings shall be made according to Section 301.060 C. 4. and 5. In granting a Variance the Board may prescribe appropriate conditions and safeguards which are in conformity with the purposes of the Floodplain Regulation. Violations of such conditions and safeguards, when made part of the terms under which the Variance is granted, shall be deemed a violation of the Floodplain Regulation punishable under Section 303.110. No Variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the Regulatory Flood Protection Elevation. Variances may be used to modify permissible methods of flood protection.

\*(Amended by Ord. 80-84, February 16, 1993.)

A copy of all decisions granting Variances shall be forwarded by mail to the Commission of Natural Resources within ten days of such action.

Appeals from any decision of the Board may be made in accordance with and as specified in Section 301.060 C. 6.

D. Flood Insurance Notice and Record Keeping: The Zoning Administrator shall notify the applicant for a variance that: 1) 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 for \$100 of insurance coverage, and 2) 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.

SECTION 303.090 CONDITIONAL USES - STANDARDS OF EVALUATION  
PROCEDURES

A. Rules and Hearings: A Conditional Use Permit Application shall be acted upon according to the procedures outlined in Section 301.060 D.

Upon filing with the City of Lake Elmo an application for a Conditional Use Permit, 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.

B. Procedures to be followed by the City of Lake Elmo in Passing on Conditional Use Permit Applications Within the Floodplain District:

1. 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 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.
  - b) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
  - c) Transmit one copy of the information described 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.

d) 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.

C. Factors Upon Which the Decision of the City Council Shall Be Based: In passing upon Conditional Use applications, the City of Lake Elmo shall consider all relevant factors specified in other sections of the Floodplain Regulation, and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. 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.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its intents to flood damage and the effect of such damage on the individual owner.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
10. The safety of access to the property in times of flood for ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
12. Such other factors which are relevant to the purposes of the Floodplain Regulation.

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

1. Modification of waste treatment and water supply facilities.
2. Limitations on period of use, occupancy, and operation.
3. Imposition of operational controls, sureties, and deed restrictions.
4. Requirements for construction of channel modifications, compensatory storage of a two to one replacement or greater, dikes, levees, and other protective measures.
5. Flood-proofing measures, in accordance with the State Building Code and the Floodplain Regulation. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

#### SECTION 303.100 NONCONFORMING USES

A. A structure or the use of a structure or premises which was lawful before the passage or amendment of the Floodplain Regulation but which is not in conformity with the provisions of the Floodplain Regulation may be continued subject to the requirements of Section 301.050 B.

\* B. The cost of all structural alterations or additions both inside and outside of a structure 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 Lake Elmo's initial flood plain 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 Section 303.050. \* (Amended by Ord. 80-84, February 16, 1993.)

#### SECTION 303.110 PENALTIES FOR VIOLATION

A. Violation of the provisions of the Floodplain Regulation 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 herein contained shall prevent the City of Lake Elmo 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 the Floodplain Regulation violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

2. When the Floodplain Regulation 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 the Floodplain Regulation 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 (1) 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 (2) 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 the Floodplain Regulation 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 the Floodplain Regulation.



#### SECTION 303.120 AMENDMENTS

The floodplain designation on the Official Map shall not be removed from floodplain areas unless it can be shown that the designation is in error. 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.

All amendments to the Floodplain Regulation 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 the Floodplain Regulation and said notice shall include a draft of the proposed amendment or technical study under consideration.