

ORDINANCE NUMBER #196

BENTON COUNTY

Flood Plain Management Ordinance of 1990 as amended by Ordinance #446

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BENTON COUNTY FLOOD PLAIN MANAGEMENT ORDINANCE

BE IT ORDAINED BY THE BENTON COUNTY
BOARD OF COMMISSIONERS AS FOLLOWS:

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

- 1.1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and 394, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the Board of Commissioners of Benton County, Minnesota does ordain as follows:
- 1.2 Findings of Fact:
 - 1.2.1 The flood hazard areas of Benton County, 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 or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - 1.2.2 Methods Used to Analyze Flood Hazards. This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
 - 1.2.3 National Flood Insurance Program Compliance. This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.
- 1.3 Statement of Purpose: It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.2.1 by provisions contained herein.

SECTION 2.0 GENERAL PROVISIONS

- 2.1 Lands to Which Ordinance Applies: This ordinance shall apply to all lands under the jurisdiction of Benton County, Minnesota shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.
- 2.2 Establishment of Official Maps: The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Ordinance. The attached material shall include the Flood Insurance Study, Benton County, Minnesota And Incorporated Areas, the Flood Insurance Rate Map Index for Benton County, Minnesota And Incorporated Areas with a Map Number of

27009CIND0A and all Flood Insurance Rate Map panels therein indicated on the Flood Insurance Rate Map Index for Benton County, Minnesota And Incorporated Areas that apply to the unincorporated areas of Benton County, Minnesota; all of the aforementioned documents being dated August 16, 2011 and prepared by the Federal Emergency Management Agency. The Official Zoning Map shall be on file in the Office of the County Auditor and the Zoning Administrator. These requirements were adopted by reference by Ordinances #131 and #185 (Sections 7.9 of the Development Code) shall continue in full force and effect.

2.3 Regulatory Flood Protection Elevation: The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

2.4 Interpretation:

2.4.1 In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

2.4.2 The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the Community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier, 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 of Adjustment and to submit technical evidence.

2.5 Abrogation and Greater Restrictions: It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only. Sections 7.9 of Ordinance #185 shall continue to be effective.

2.6 Warning and Disclaimer of Liability: This Ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of Benton County or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

- 2.7 Severability: If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.
- 2.8 Definitions: Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.
- 2.8.1 Accessory Building - a subordinate building excluding storage structures or portion of the principal building, the use of which is incidental to that of the dominant use of the principal building or land.
- 2.8.2 Accessory Use/Structure or Storage Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- 2.8.3 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.
- 2.8.4 Conditional/Interim Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:
- (a) Certain conditions as detailed in the zoning ordinance exist.
 - (b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
- 2.8.5 Development Code - means the Benton County Development Code, Ordinance 185 as amended from time to time.
- 2.8.6 Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- 2.8.7 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.
- 2.8.8 Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
- 2.8.9 Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study, Benton County, Minnesota and Incorporated Areas.

- 2.8.10 Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- 2.8.11 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.
- 2.8.12 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
- 2.8.13 Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.
- 2.8.14 Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
- 2.8.15 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, watercourse, or regulatory flood plain 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.
- 2.8.16 Principal Use or Structure - means all uses or structures that are not accessory uses or structures.
- 2.8.17 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.
- 2.8.18 Recreational Vehicle - a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.
- 2.8.19 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", 1 percent annual chance of flood used in the Flood Insurance Study.

- 2.8.20 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 flood plain that result from designation of a floodway.
- 2.8.21 Storage Structure - Any building having a roof which may provide shelter or enclosure of movable personal goods but not to include livestock or persons.
- 2.8.22 Structure - any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities. "Structure" does not include accessory or storage buildings smaller than or equal to 120 square feet, improved driveways, sidewalks, or slabs.
- 2.8.23 Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred, as determined by the County Assessor.
- 2.8.24 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement as determined by the County Assessor. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this Ordinance, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.
- 2.8.25 Variance - means any modification or variation of official controls where it is determined that, by reason of exceptional circumstances, the strict enforcement of the official controls would cause a practical difficulty
- 2.8.26 Zoning Administrator - shall mean the Benton County Department of Development Director.

SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS

3.1 Districts:

- 3.1.1 Floodway District. The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 2.2. For lakes, wetlands and other basins, the Floodway District shall include those areas designated as Zone AE (that do not have a floodway designated) and Zone A on the Flood Insurance Rate Map panels adopted in Section 2.2 that are below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- 3.1.2 Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe, which shall include the areas shown on the Flood Insurance Rate Map, adopted in Section 2.2, as being within Zone AE but being located outside of the floodway. For lakes, wetlands and other basins, the Flood Fringe District shall include those areas designated as Zone AE (that do not have a floodway designated) and Zone A on the Flood Insurance Rate Map panels adopted in Section 2.2 that are below the 1% annual chance flood elevation (100-year flood elevation) but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- 3.1.3 General Flood Plain District. The General Flood Plain District shall include those areas designated as Zone A and Zone AE (without a floodway) on the Flood Insurance Rate Map adopted in Section 2.2, which are not subject to criteria in 3.1.1 and 3.1.2 above.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Sections 4.0, 5.0 and 6.0 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- 3.2.1 New manufactured homes, replacement manufactured homes and recreational vehicles are subject to the general provisions of this Ordinance and specifically Section 9.0.
- 3.2.2 Modifications, additions, structural alterations, normal maintenance and repair or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 11.0.

3.2.3 As-built elevations for elevated or flood proofed structures must be certified by

ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Ordinance and specifically as stated in Section 10.0 of this Ordinance.

SECTION 4.0 FLOODWAY DISTRICT (FW)

4.1 Permitted Uses:

4.1.1 General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

4.1.2 This section reserved for future use.

4.1.3 Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

4.1.4 Residential lawns, gardens, parking areas, and play areas.

4.2 Standards for Floodway Permitted Uses:

4.2.1 The use shall have a low flood damage potential.

4.2.2 The use shall be permissible in the underlying zoning district if one exists.

4.2.3 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.

4.3 Conditional /InterimUses:

4.3.1 Reserved for future use.

4.3.2 Extraction and storage of sand, gravel, and other materials.

4.3.3 Marinas, boat rentals, docks, piers, wharves, and water control structures.

4.3.4 Railroads, streets, bridges, utility transmission lines, and pipelines.

4.3.5 Reserved for future use.

4.3.6 Construction of fences.

4.3.7 Reserved for future use.

4.3.8 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.

4.4 Standards for Floodway Conditional/Interim Uses:

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

4.4.2 All floodway Conditional/Interim Uses shall be subject to the procedures and standards contained in Section 10.4 of this Ordinance.

4.4.3 The Conditional/Interim Use shall be permissible in the underlying zoning district.

4.4.4 Fill:

(a) Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.

(b) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

(c) As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Planning Commission has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The Conditional/Interim Use Permit must be recorded or registered with the property in the Office of the County Recorder.

4.4.5 Accessory/Storage Structures:

(a) Accessory/Storage structures shall not be designed or used for human habitation.

(b) Accessory/storage structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:

- (1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
- (2) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

(c) Accessory/storage structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code (Section 1335). As an alternative, an accessory/storage structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards:

- (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
- (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and
- (3) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

4.4.6 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) This section reserved for future use.

4.4.7 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 flood plain shall not be allowed in the floodway.

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

SECTION 5.0 FLOOD FRINGE DISTRICT (FF)

5.1 Permitted Uses: Permitted Uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All Permitted Uses shall comply with the standards for Flood Fringe District "Permitted Uses" listed in Section 5.2 and the "Standards for all Flood Fringe Uses" listed in Section 5.5.

5.2 Standards for Flood Fringe Permitted Uses:

5.2.1 Elevating on fill is a Conditional/Interim Use regulated under Section 5.3.

5.2.2 As an alternative to elevation on fill, accessory/storage structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with Section 4.4.5 (c).

5.2.3 The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a Conditional Use.

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

5.2.5 The provisions of Section 5.5 of this Ordinance shall apply to permitted uses.

5.3 Conditional/Interim Uses:

5.3.1 Any structure that is not elevated on fill or flood proofed in accordance with Section 5.2.2 or any use of land that does not comply with the standards in Section 5.2.3-5.2.4 shall only be allowable as a Conditional/Interim Use. An application for a Conditional /Interim Use shall be subject to the standards and criteria and evaluation procedures specified in Sections 5.4-5.5 and 10.4 of this Ordinance.

5.3.2 All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be at the base flood elevation or higher and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.

5.4 Standards for Flood Fringe Conditional/Interim Uses:

5.4.1 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, 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: 1) the enclosed area is above-grade on at least one side of the structure; 2) is designed to internally flood and is constructed with flood resistant materials; and 3) is used solely for parking of vehicles, building access or storage. 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 Corps of Engineers Flood-Proofing Regulations 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 flood proofing 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 FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

5.4.2 Basements, as defined by Section 2.8.3 of this Ordinance, shall be subject to the following:

- (a) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.
- (b) This section reserved for future use.

- 5.4.3 All areas of non residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making 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 flood proofed to the FP-3 or FP-4 classification shall not be permitted.
- 5.4.4 When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.
- 5.4.5 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 County Board or delegated party.
- 5.4.6 The provisions of Section 5.5 of this Ordinance shall also apply.

5.5 Standards for All Flood Fringe Uses:

- 5.5.1 All new principal structures must have vehicular access at or above an elevation not more than 6 inches below the base flood elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.
- 5.5.2 Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation.
- 5.5.3 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. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

- 5.5.4 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 shall be certified by a qualified engineer at the expense of the landowner prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- 5.5.5 Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.
- 5.5.6 Standards for recreational vehicles are contained in Section 9.3.
- 5.5.7 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.

SECTION 6.0 GENERAL FLOOD PLAIN DISTRICT

6.1 Permissible Uses:

- 6.1.1 The uses listed in Section 4.1 of this Ordinance shall be permitted uses.
- 6.1.2 All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Section 6.2 and 6.3 below. Section 4.0 shall apply if the proposed use is in the Floodway District and Section 5.0 shall apply if the proposed use is in the Flood Fringe District.

6.2 Procedures for Floodway and Flood Fringe Determinations for Streams Located Within the General Flood Plain District:

- 6.2.1 Upon receipt of an application for a Permit or other approval within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator, or delegate, 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-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional 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; size, location, and spatial arrangement of all proposed and existing structures on the site; 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.

6.2.2 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 Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and Code 44 of Federal Regulations Part 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 .5' 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.

6.2.3 The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Planning Commission. The Planning Commission must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Planning Commission, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency or the Department of Natural Resources for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Planning Commission shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this Ordinance.

6.3 Procedures for determining 1% annual chance flood elevations (100-YR flood elevations)

Ordinance #196

Flood Plain Management Ordinance

Amended 8-02-2011 Ordinance #446

for lakes located in Zone A:

- 6.3.1 Upon receipt of an application for a permit or other approval within a Zone A, the Zoning Administrator will use the 1% annual chance flood elevation for that basin that has previously been determined in accordance with approved FEMA methods, if available. If the 1% annual chance flood elevation has not been previously determined, the applicant shall be required to furnish all necessary information as deemed necessary by the Zoning Administrator for the determination for the 1% annual chance flood elevation in accordance with approved FEMA methods.
- 6.3.2 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 1% annual chance flood elevation (100-year flood elevation). Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 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.
- 6.3.3 Once the 1% annual chance flood elevation (100-year flood elevation) has been determined, the Zoning Administrator shall process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this Ordinance.

SECTION 7.0 SUBDIVISIONS

- 7.1 Review Criteria: No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building site not more than 6 inches below the base flood elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.
- 7.2 Floodway/Flood Fringe Determinations in the General Flood Plain District: In the General Flood Plain District, applicants shall provide the information required in Section 6.2 and 6.3 of this Ordinance to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the Regulatory Flood Protection Elevation for the subdivision site.
- 7.3 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.

SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

- 8.1 Public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.
- 8.2 Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Sections 4.0 and 5.0 of this Ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.
- 8.3 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 flood waters 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 flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with Section 9.6 of the Benton County Development Code shall be determined to be in compliance with this Section. (Ord. #257 adopted 11/7/95)

SECTION 9.0 MANUFACTURED HOMES, MANUFACTURED HOME PARKS AND PLACEMENT OF RECREATIONAL VEHICLES.

- 9.1 New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 7.0 of this Ordinance and the provisions of Benton County Ordinance #185 or successor Ordinance.
- 9.2 The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record as defined in Section 3 of Ordinance #185, or successor Ordinance that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 5.0 of this Ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 5.5.1, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing body or delegated party.
- 9.2.1 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.

9.3 Recreational vehicles that do not meet the exemption criteria specified in Section 9.3.1 below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 9.3.3-9.3.4 below.

9.3.1 Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 9.3.2 below 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.
- (d) 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.

9.3.2 Areas Exempted For Placement of Recreational Vehicles:

- (a) Individual lots or parcels of record (see Ordinance #185, or successor Ordinance, Section 3)
- (b) Existing commercial recreational vehicle parks or campgrounds.
- (c) Existing condominium type associations.

9.3.3 Recreational vehicles exempted in Section 9.3.1 lose this exemption when development occurs on the parcel exceeding \$500.00 for a structural addition to the recreational vehicle or exceeding \$500 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/flood proofing requirements and the use of land restrictions specified in Sections 4.0 , 5.0 and 6.0 of this Ordinance.

9.3.4 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 (5) units or dwelling sites shall be subject to the following:

- (a) Any new or replacement travel trailer or travel vehicle will be allowed in the Floodway or Flood Fringe Districts provided said 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 5.5.1 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.

- (b) All new or replacement recreational vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a Conditional/Interim Use if in accordance with the following provisions and the provisions of 10.4 of the Ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation and shall demonstrate the provisions of Section 9.3.1 (a) and (b) of this Ordinance 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 8.3 of this Ordinance.

SECTION 10.0 ADMINISTRATION

10.1 Zoning Administrator: A Zoning Administrator or other official designated by the County Board shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 12.0 of the Ordinance.

10.2 Permit Requirements:

10.2.1 Permit Required. A Permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, 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; and 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 flood plain.

10.2.2 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.

10.2.3 State and Federal Permits. Prior to granting a Permit or processing an application for a Conditional/Interim Use Permit or Variance, the Zoning Administrator shall determine that the applicant has contacted the State and Federal Government regarding State and Federal Permits.

10.2.4 Notice of Zoning Compliance 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 notice 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 Ordinance.

- 10.2.5 Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Notice of Zoning Compliance. Permits, Conditional/Interim Use Permits, or notices 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 Ordinance, and punishable as provided by Section 12.0 of this Ordinance.
- 10.2.6 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 ordinance. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.
- 10.2.7 Record of Lowest 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 flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or and alterations additions to structures are flood-proofed.
- 10.2.8 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 Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- 10.2.9 Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) 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 said technical or scientific data.

10.3 Board of Adjustment:

- 10.3.1 Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by Minnesota Statutes,

Chapter 394.

10.3.2 Administrative Review. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Ordinance. Appeals must be submitted as an application to the Board of Adjustment for consideration.

10.3.3 Variances. The Board may authorize upon application in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances as provided for in Minnesota Statutes 394 and the Development Code Section 11.5 as amended from time to time.

In addition to the variance criteria specified in statute and the Development Code, the following additional variance criteria of the Federal Emergency Management Agency must also 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 (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of 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.

In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations in the County, and Minnesota Statutes 394 which justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State law.

10.3.4 Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board shall follow the requirements of MN Statute 15.99 or successor statute. 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.

10.3.5 Decisions. The Board of Adjustment may, so long as such action is in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or modify

the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a Variance the Board may prescribe appropriate conditions and safeguards such as those specified in Section 10.4.6, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Variance is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting Variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.3.6 Appeals. Appeals from any decision of the Board shall be taken in accordance with Minnesota law.

10.3.7 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. The Zoning Administrator shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the county's annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

10.4 Conditional/Interim Uses. The Benton County Planning Commission shall hear and decide applications for Conditional/Interim Uses permissible under this Ordinance. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

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

10.4.2 Decisions. The Planning Commission shall arrive at a decision on a conditional/interim use in accordance with MN Statute 15.99. In granting a conditional/interim Use Permit the Planning Commission shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 10.4.6, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the conditional/interim Use Permit is granted, shall be deemed a violation of this Ordinance and shall be subject to those remedies and penalties specified in Section 12.0. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

- 10.4.3 Procedures to be followed by the Planning Commission in Passing on Conditional/Interim Use Permit Applications Within all Flood Plain Districts.
- (a) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Zoning Administrator for determining the suitability of the particular site for the proposed use:
 - (1) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel.
 - (2) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
 - (b) Transmit one copy of the information described in subsection (a) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
 - (c) Based upon the technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
- 10.4.4 Factors Upon Which the Decision of the Planning Commission Shall Be Based. In approving Conditional/Interim Use applications, the Planning Commission shall evaluate the conditional/interim use applications in accordance with Minn. Stat. Ch. 394, Development Code Section 11.6 et. seq., consider all relevant factors specified in other sections of this Ordinance, and consider the following factors:
- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - (b) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
 - (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (e) The importance of the services provided by the proposed facility to the community.
 - (f) The requirements of the facility for a waterfront location.
 - (g) The availability of alternative locations not subject to flooding for the proposed use.
 - (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (i) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - (j) The safety of access to the property in times of flood for ordinary and emergency vehicles.

- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) Such other factors which are relevant to the purposes of this Ordinance.

10.4.5 Time for Acting on Application. The Planning Commission shall act on an application in accordance to MN Statute 15.99.

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

- (a) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy, and operation.
- (c) Imposition of operational controls, sureties, and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- (e) Flood-proofing measures, in accordance with the Corps of Engineers Flood-Proofing Regulations and this Ordinance. 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 11.0 NONCONFORMING USES

11.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.8.24(b) of this Ordinance, shall be subject to the provisions of Sections 11.1.1 – 11.1.5 of this Ordinance.

11.1.1 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity except as permitted by this Ordinance and the Development Code.

11.1.2 Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in 11.1.3 and 11.1.6 below.

11.1.3 The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure as indicated in the records of the County Assessor unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must

include all costs such as construction materials and the reasonable cost placed on 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 4.0, 5.0 or 6.0 of this Ordinance for new structures depending upon whether the structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

11.1.4 If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Ordinance. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

11.1.5 If any nonconforming use or structure is substantially damaged, as defined in Section 2.8.23 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0, 5.0 or 6.0 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

11.1.6 If a substantial improvement occurs, as defined in Section 2.8.24 of this Ordinance, 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 Section 4.0, 5.0 or 6.0 of this Ordinance for new structures, depending upon whether the structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

SECTION 12.0 PENALTIES FOR VIOLATION

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

12.2 Nothing herein contained shall prevent Benton County from taking such other lawful action as is necessary to prevent or to remedy any violation. Such actions may include but are not limited to:

12.2.1 In responding to a suspected ordinance violation, the Zoning Administrator and the county may utilize the full array of enforcement actions available to it including but not limited to criminal prosecution, 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.

12.2.2 When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall 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 county's plan of action to correct the violation to the degree possible.

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

12.2.4 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and may be prosecuted accordingly.

SECTION 13.0 AMENDMENTS

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. 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 this Ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.