

ORDINANCE NO. 157, 2<sup>ND</sup> SERIES

AN ORDINANCE OF THE CITY OF WINDOM, MINNESOTA,  
AMENDING CITY CODE CHAPTER 153  
ENTITLED "FLOODPLAIN MANAGEMENT"

THE CITY COUNCIL OF THE CITY OF WINDOM ORDAINS:

WHEREAS, the City Council adopted Ordinance No. 125, 2<sup>nd</sup> Series on December 15, 2003, (effective date December 24, 2003) which amended the existing Chapter 11, "Land Use Regulations ("Zoning"), of the City Code including a revised "Floodplain Management" Section (11.73); and

WHEREAS, thereafter the City Council adopted Ordinance No. 138, 2<sup>nd</sup> Series on October 16, 2012, (effective October 24, 2012) which codified the City Code and renumbered the Floodplain Management section of the City Code as Chapter 153; and

WHEREAS, the Minnesota Department of Natural Resources ("DNR") has recommended that the City of Windom adopt a revised Floodplain Management Ordinance to include references to floodplain mapping changes and also to include language required by the Federal Emergency Management Agency ("FEMA"), all of which have occurred since adoption of the ordinance in 2003; and

WHEREAS, an amended ordinance based on the DNR's sample ordinance has been prepared, reviewed and approved by the City Attorney and the Planning Commission, and recommended by the Planning Commission for approval by the City Council; and

WHEREAS, the City Council has reviewed the proposed amendment of Chapter 153 and determined that it is in the best interests of the citizens of Windom that Chapter 153 be amended as set forth herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINDOM, MINNESOTA, ORDAINS:

THE CITY CODE OF THE CITY OF WINDOM IS HEREBY AMENDED BY DELETING CHAPTER 153 ("FLOODPLAIN MANAGEMENT") IN ITS ENTIRETY AND INSERTING THE FOLLOWING IN LIEU THEREOF:

## CHAPTER 153: FLOODPLAIN MANAGEMENT

### Section

#### *Statutory Authorization, Findings of Fact and Purpose*

- 153.001 Statutory Authorization
- 153.002 Purpose

#### *General Provisions*

- 153.003 How to Use This Ordinance
- 153.004 Lands to Which Ordinance Applies
- 153.005 Incorporation of Maps by Reference
- 153.006 Regulatory Flood Protection Elevation
- 153.007 Interpretation
- 153.008 Abrogation and Greater Restrictions
- 153.009 Warning and Disclaimer of Liability
- 153.010 Severability
- 153.011 Definitions
- 153.012 Annexations
- 153.013 Detachments

#### *Establishment of Zoning Districts*

- 153.014 Establishment of Zoning Districts

#### *Floodway District (FW)*

- 153.020 Permitted Uses
- 153.021 Standards for Floodway Permitted Uses
- 153.022 Conditional Uses
- 153.023 Standards for Floodway Conditional Uses

#### *Flood Fringe District (FF)*

- 153.025 Permitted Uses
- 153.026 Standards for Flood Fringe Permitted Uses
- 153.027 Conditional Uses
- 153.028 Standards for Flood Fringe Conditional Uses

#### *General Floodplain District (GF)*

- 153.030 Permitted Uses
- 153.031 Procedures for Floodway and Flood Fringe Determinations

#### *Land Development Standards*

- 153.035 Land Development Standards

***Public Utilities, Railroads, Roads, and Bridges***

153.040 Public Utilities, Railroads, Roads, and Bridges

***Manufactured Homes and Manufactured Home Parks***

153.045 Manufactured Homes and Manufactured Home Parks

***Recreational Vehicles***

153.046 Recreational Vehicles

***Administration***

153.050 Administration

153.060 Variances

153.065 Conditional Uses

***Nonconformities***

153.070 Nonconformities

***Amendments***

153.075 Amendments

***Penalties and Enforcement***

153.999 Penalties and Enforcement

# FLOODPLAIN MANAGEMENT

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

### **§ 153.001 STATUTORY AUTHORIZATION.**

The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462, as amended from time to time, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

### **§ 153.002 PURPOSE.**

(A) This ordinance regulates development in the flood hazard areas of the City of Windom. These flood hazard areas are subject to periodic inundation, which may result in loss of life and 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. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

(B) *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.

(C) This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

## ***GENERAL PROVISIONS***

### **§ 153.003 HOW TO USE THIS ORDINANCE.**

This ordinance adopts the floodplain maps applicable to the City of Windom and includes three floodplain districts: Floodway, Flood Fringe, and General Floodplain.

(A) Where Floodway and Flood Fringe Districts are delineated on the floodplain maps, the standards in Sections 153.020 through 153.028 will apply, depending on the location of a property.

(B) Locations where Floodway and Flood Fringe Districts are not delineated on the floodplain maps are considered to fall within the General Floodplain District. Within the General Floodplain District, the Floodway District standards in Sections 153.020 through 153.023 apply unless the floodway boundary is determined, according to the process outlined in Section 153.031. Once the floodway boundary is determined, the Flood Fringe District standards in Sections 153.025 through 153.028 may apply outside the floodway.

### **§ 153.004 LANDS TO WHICH ORDINANCE APPLIES.**

This ordinance applies to all lands within the jurisdiction of the City of Windom shown on the Official Zoning Map and/or the attachments to the map as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts.

(A) The Floodway, Flood Fringe and General Floodplain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.

**§ 153.005 INCORPORATION OF MAPS BY REFERENCE.**

The following maps together with all attached materials are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes: the Flood Insurance Study for the City of Windom dated June 5, 1989; the Flood Insurance Rate Map for the City of Windom, panels 2700900001C dated June 5, 1989; therein. the Flood Insurance Study for County of Cottonwood, Minnesota Unincorporated Areas dated July 1980; the Cottonwood County Unincorporated Areas Flood Insurance Rate Map panels 2706220180, 2706220180B, 2706220185B, 2706220190, 2706220190B, and 2706220195B dated January 2, 1981; and the Letter of Map Revision, Case No. 15-05-5228P, with an effective date of March 17, 2016, including all attached maps, tables, and flood profiles; all prepared by the Federal Emergency Management Agency. These materials are on file in the Building and Zoning Office .

**§ 153.006 REGULATORY FLOOD PROTECTION ELEVATION.**

The regulatory flood protection elevation (RFPE) is 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.

**§ 153.007 INTERPRETATION.**

The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.

(A) Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program Map showing the area within the regulatory floodplain, and other available technical data.

(B) Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Windom City Council, acting as the Board of Adjustment, and to submit technical evidence.

**§ 153.008 ABROGATION AND GREATER RESTRICTIONS.**

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

**§ 153.009 WARNING AND DISCLAIMER OF LIABILITY.**

This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of Windom or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**§ 153.010 SEVERABILITY.**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

**§ 153.011 DEFINITIONS.**

Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.

**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.

**BASE FLOOD.** The flood having a one percent chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION.** The elevation of the “regional flood.” The term “base flood elevation” is used in the flood insurance survey.

**BASEMENT.** 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.** 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:

- (1) Certain conditions as detailed in the zoning ordinance exist; and
- (2) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

**CRITICAL FACILITIES.** Facilities necessary to a community’s public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.

**DEVELOPMENT.** Any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**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.

**FARM FENCE.** A fence as defined by Minn. Statutes Section 344.02, Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the

potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.

**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 equaled or exceeded.

**FLOOD FRINGE.** The portion of the Special Flood Hazard Area (one percent annual chance flood) located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Studies referenced in Section 153.005.

**FLOOD PRONE AREA.** Any land susceptible to being inundated by water from any source (see “Flood”).

**FLOODPLAIN.** The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

**FLOODPROOFING.** 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.

**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; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations, Part 60.3.

**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.”

**NEW CONSTRUCTION.** Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this ordinance.

**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 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.

**ONE HUNDRED YEAR FLOODPLAIN.** Lands inundated by the “Regional Flood” (see definition).

**PRINCIPAL USE OR STRUCTURE.** 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.

**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 is synonymous with the term “travel trailer/travel vehicle.”

**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 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

**REGULATORY FLOOD PROTECTION ELEVATION (RFPE).** An elevation not less 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.

**REPETITIVE LOSS.** Flood-related damages sustained by a structure on two separate occasions during a ten- year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

**SPECIAL FLOOD HAZARD AREA.** A term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”

**START OF CONSTRUCTION.** Includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**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, recreational vehicles not meeting the exemption criteria specified in Section 153.046(B) of this ordinance and other similar items.

**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.

**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. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

(1) 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.

(2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this ordinance, “historic structure” is as defined in 44 Code of Federal Regulations, Part 59.1.

#### § 153.012 ANNEXATIONS.

The Flood Insurance Rate Map panels, adopted by reference into Section 153.005 above, may include floodplain areas that lie outside of the corporate boundaries of the City of Windom at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Windom after the date of adoption of this ordinance, the newly-annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

#### § 153.013 DETACHMENTS.

The Flood Insurance Rate Map panels, adopted by reference into Section 153.005 above, will include floodplain areas that lie inside the corporate boundaries of municipalities at the time of adoption of this ordinance. If any of these floodplain land areas are detached from a municipality and come under the jurisdiction of the City of Windom after the date of adoption of this ordinance, the newly-detached floodplain lands will be subject to the provisions of this ordinance immediately upon the date of detachment.

### *ESTABLISHMENT OF ZONING DISTRICTS*

#### § 153.014 ESTABLISHMENT OF ZONING DISTRICTS.

(A) **Floodway District.** The Floodway District includes those areas within Zones AE, A9, A10 (that have a floodway delineated) as shown on the Flood Insurance Rate Map adopted in Section 153.005.

(B) **Flood Fringe District.** The Flood Fringe District includes areas within Zones AE, A9, A10 on the Flood Insurance Rate Map adopted in Section 153.005, but located outside of the floodway.

(C) **General Floodplain District.** The General Floodplain District includes those areas within Zone A as shown on the Flood Insurance Rate Map adopted in Section 153.005.

(D) *Applicability.* Within the floodplain districts established in this ordinance, the use, size, type and location of development must comply with the terms of this ordinance and other applicable regulations. In no cases shall floodplain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses or conditional uses in Sections 153.020 through 153.031 are prohibited. In addition, critical facilities, as defined in Section 153.011, are prohibited in all floodplain districts.

### *FLOODWAY DISTRICT (FW)*

#### § 153.020 PERMITTED USES.

The following uses, subject to the standards set forth in Section 153.021, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

(A) General farming, pasture, grazing, outdoor plant nurseries, horticulture, forestry, sod farming, and wild crop harvesting.

(B) Industrial-commercial loading areas, parking areas, and airport landing strips.

(C) Open space uses, including but not limited to 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, hunting and fishing areas, and single or multiple purpose recreational trails.

(D) Residential yards, lawns, gardens, parking areas, and play areas.

(E) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit.

**§ 153.021 STANDARDS FOR FLOODWAY PERMITTED USES.**

(A) The use must have a low flood damage potential.

(B) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.

(C) Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

**§ 153.022 CONDITIONAL USES.**

The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 153.065 of this ordinance and further subject to the standards set forth in Section 153.023, if otherwise allowed in the underlying zoning district or any applicable overlay district.

(A) Structures accessory to the uses listed in Sections 153.020 (A), (B), and (C) above and the uses listed in Sections 153.022 (B) and (C) below.

(B) Extraction and storage of sand, gravel, and other materials.

(C) Marinas, boat rentals, permanent docks, piers, wharves, and water control structures.

(D) Storage yards for equipment, machinery, or materials.

(E) Placement of fill or construction of fences that obstruct flood flows. Farm fences, as defined in Section 153.011, are permitted uses.

(F) Travel-ready recreational vehicles meeting the exception standards in Section 153.046(B).

(G) Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

**§ 153.023 STANDARDS FOR FLOODWAY CONDITIONAL USES.**

(A) *All Uses.* A conditional use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.

(B) Fill; Storage of Materials and Equipment:

(1) 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.

(2) Fill, dredge spoil, and other similar materials deposited or stored in the floodplain must be protected from erosion by vegetative cover, mulching, riprap or other acceptable method. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.

(3) Temporary placement of fill, other materials, or equipment which would cause an increase to the stage of the 1% percent chance or regional flood may only be allowed if the Building & Zoning Office has approved a plan that assures removal of the materials from the floodway based upon the flood warning time available.

(C) *Accessory Structures.* Accessory structures, as identified in Section 153.022(A), may be permitted, provided that:

(1) Structures are not intended for human habitation;

(2) Structures will have a low flood damage potential;

(3) Structures will be constructed and placed so as to offer a minimal obstruction to the flow of flood waters;

(4) Service utilities, such as electrical and heating equipment, within these structures must be elevated to or above the regulatory flood protection elevation or properly floodproofed;

(5) Structures must be elevated on fill or structurally dry floodproofed in accordance with the FP1 or FP2 floodproofing classifications in the State Building Code. All floodproofed structures must be adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls.

(6) As an alternative, an accessory structure may be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment and does not exceed 576 square feet in size. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:

(a) To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and

(b) 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.

(D) Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters are subject to the provisions of Minnesota Statutes, Section 103G.245.

(E) A levee, dike or floodwall constructed in the floodway must not cause an increase to the 1% chance or regional flood. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.

(F) Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

## ***FLOOD FRINGE DISTRICT (FF)***

### **§ 153.025 PERMITTED USES.**

Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Section 153.026. If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.

### **§ 153.026 STANDARDS FOR FLOOD FRINGE PERMITTED USES.**

(A) All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.

(B) *Accessory Structures.* As an alternative to the fill requirements of Section 153.026(A), structures accessory to the uses identified in Section 153.025 may be permitted to be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:

(1) The accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.

(2) All portions of floodproofed accessory structures below the Regulatory Flood Protection Elevation must be: (i) adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls, (ii) be constructed with materials resistant to flood damage, and (iii) must have all service utilities be water-tight or elevated to above the regulatory flood protection elevation.

(3) Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:

(a) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and

(b) 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.

(C) The cumulative placement of fill or similar material on a parcel must not exceed 1,000 cubic yards, unless the fill is specifically intended to elevate a structure in accordance with Section 153.026(A) of this ordinance, or if allowed as a conditional use under Section 153.027(C) below.

(D) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.

(E) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.

(F) 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.

(G) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.

(H) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning /emergency evacuation plan acceptable to the Building & Zoning Office.

(I) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(J) Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.

(K) Manufactured homes and recreational vehicles must meet the standards of Sections 153.045 and 153.046 of this ordinance.

#### **§ 153.027 CONDITIONAL USES.**

The following uses and activities may be allowed as conditional uses, if allowed in the underlying zoning district(s) or any applicable overlay district, following the procedures in Section 153.065 of this ordinance.

(A) Any structure that is not elevated on fill or floodproofed in accordance with Sections 153.026(A) and (B) of this ordinance.

(B) Storage of any material or equipment below the regulatory flood protection elevation.

(C) The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with Section 153.026(A) of this ordinance.

(D) The use of methods to elevate structures above the regulatory flood protection elevation, including stilts, pilings, parallel walls, or above-grade, enclosed areas such as crawl spaces or tuck under garages, shall meet the standards in Section 153.028(F).

#### **§ 153.028 STANDARDS FOR FLOOD FRINGE CONDITIONAL USES.**

(A) The standards listed in Sections 153.026(D) through (J) apply to all conditional uses.

(B) Basements, as defined by Section 153.011 of this ordinance, are subject to the following:

(1) Residential basement construction is not allowed below the regulatory flood protection elevation, except as authorized in Section 153.028(G).

(2) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry floodproofed in accordance with Section 153.028(C) of this ordinance, or meets the “Reasonably Safe From Flooding” standards in Section 153.028(G).

(C) All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be floodproofed in accordance with the structurally dry floodproofing

classifications in the State Building Code. Structurally dry floodproofing must meet the FP1 or FP2 floodproofing classification in the State Building Code, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(D) The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.

(1) The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the regional (1% chance) flood event.

(2) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Building & Zoning Office.

(3) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.

(E) Storage of materials and equipment below the regulatory flood protection elevation must comply with an approved emergency plan providing for removal of such materials within the time available after a flood warning.

(F) 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. 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) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

(1) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

(2) 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:

(a) The minimum area of openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and

(b) That the enclosed area will be designed of flood resistant materials in accordance with the FP3 or FP4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

(G) When the Federal Emergency Management Agency has issued a Letter of Map Revision based on Fill (LOMR-F) for vacant parcels of land elevated by fill to the 100-year flood elevation, the area elevated by fill remains subject to the provisions of this ordinance. A structure may be placed on the elevated area specified in the LOMR-F with the lowest floor below the Regulatory Flood Protection Elevation provided the structure meets provisions of (a) and (b) below:

(1) No floor level or portion of a structure that is below the Regulatory Flood Protection Elevation shall be used as habitable space or for storage of any property, materials, or equipment that might constitute a safety hazard when contacted by flood waters.

(2) For residential and non-residential structures, the basement floor may be placed below the Regulatory Flood Protection Elevation, provided:

(a) The top of the immediate floor above any basement area shall be place at or above the Regulatory Flood Protection Elevation, and

(b) Any area of the structure placed below the Regulatory Flood Protection Elevation shall meet the “Reasonably Safe From Flooding” standards in the Federal Emergency Management Agency’s publication entitled Ensuring that Structures Built on Fill In or Near Special Flood Hazard Areas are Reasonably Safe From Flooding,” Technical Bulletin 10-01, which is hereby adopted by reference and made a part of this ordinance. In accordance with the provisions of this ordinance, and specifically Section 153.028(G) of this ordinance, the applicant shall submit documentation that the structure is designed and built in accordance with either the “Simplified Approach” or “Engineered Basement Option” found in the above-cited FEMA publication.

### ***GENERAL FLOODPLAIN DISTRICT (GF)***

#### **§ 153.030 PERMITTED USES.**

(A) The uses listed in Section 153.020 of this ordinance, Floodway District Permitted Uses, are permitted uses.

(B) All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 153.031 below. Sections 153.020 through 153.023 apply if the proposed use is determined to be in the Floodway District. Sections 153.025 through 153.028 apply if the proposed use is determined to be in the Flood Fringe District.

#### **§ 153.031 PROCEDURES FOR FLOODWAY AND FLOOD FRINGE DETERMINATIONS.**

(A) Upon receipt of an application for a permit or other approval within the General Floodplain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.

(B) If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in 153.031(C) below.

(C) The determination of floodway and flood fringe must include the following components, as applicable:

(1) Estimate the peak discharge of the regional (1% chance) flood.

(2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

(3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries.

(D) The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.

(E) Once the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of Sections 153.020 through 153.023 and Sections 153.025 through 153.028 of this ordinance.

### ***LAND DEVELOPMENT STANDARDS***

#### **§ 153.035 LAND DEVELOPMENT STANDARDS.**

(A) *In General:* Recognizing that flood prone areas may exist outside of the designated floodplain districts, the requirements of this section apply to all land within the City of Windom.

(B) *Subdivisions:* No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.

(1) All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.

(2) All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the Building & Zoning Office. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.

(3) For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.

(4) In the General Floodplain District, applicants must provide the information required in Section 153.031 of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

(5) If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:

(a) All such proposals are consistent with the need to minimize flood damage within the flood prone area;

(b) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and

(c) Adequate drainage is provided to reduce exposure of flood hazard.

(C) *Building Sites.* If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

(a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(b) Constructed with materials and utility equipment resistant to flood damage;

(c) Constructed by methods and practices that minimize flood damage; and

(d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

#### ***PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES***

#### **§ 153.040 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES.**

(A) *Public Utilities.* All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

(B) *Public Transportation Facilities.* Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 153.020 through 153.023 and Sections 153.025 through 153.028 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

(C) *On-site Water Supply and Sewage Treatment 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 are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; 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, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

#### ***MANUFACTURED HOMES AND MANUFACTURED HOME PARKS***

#### **§ 153.045 MANUFACTURED HOMES AND MANUFACTURED HOME PARKS.**

(A) *Manufactured Homes*. New manufactured home parks and expansions to existing manufactured home parks are prohibited in any floodplain district. For existing manufactured home parks or lots of record, the following requirements apply:

(1) Placement or replacement of manufactured home units is prohibited in the Floodway District.

(2) If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of Sections 153.025 through 153.028 of this ordinance and the following standards.

(a) New and replacement manufactured homes must be elevated in compliance with Sections 153.025 through 153.028 of this ordinance and 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 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.

(b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 153.035(B)(2).

### ***RECREATIONAL VEHICLES***

#### **§ 153.046 RECREATIONAL VEHICLES.**

New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be treated as new structures meeting the requirements of this ordinance.

(A) Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the following areas and meet the criteria listed in Section 153.046(B):

- (1) Individual lots or parcels of record.
- (2) Existing commercial recreational vehicle parks or campgrounds.
- (3) Existing condominium-type associations.

(B) Criteria for Exempt Recreational Vehicles:

(1) The vehicle must have a current license required for highway use.

(2) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.

(3) No permanent structural type additions may be attached to the vehicle.

(4) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.

(5) Accessory structures are not permitted within the Floodway District. Any accessory structure in the Flood Fringe District must be constructed of flood-resistant materials and be securely anchored, meeting the requirements applicable to manufactured homes in Section 153.045(A)(2).

(6) An accessory structure must constitute a minimal investment.

(C) Recreational vehicles that are exempt in Section 153.046(B) lose this exemption when development occurs on the site that exceeds a minimal investment for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as new structures subject to the elevation and floodproofing requirements of Sections 153.025 through 153.028 of this ordinance. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle should flooding occur.

### *ADMINISTRATION*

#### § 153.050 ADMINISTRATION.

(A) *Zoning Administrator.* A Zoning Administrator or other official designated by the City of Windom must administer and enforce this ordinance.

(B) *Permit Requirements.*

(1) *Permit Required.* A permit must be obtained from the Zoning Administrator prior to conducting the following activities:

(a) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.

(b) The use or change of use of a building, structure, or land.

(c) The construction of a dam, fence, or on-site septic system, although a permit is not required for a farm fence as defined in this ordinance.

(d) The change or extension of a nonconforming use.

(e) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.

(f) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.

(g) Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.

(h) Any other type of “development” as defined in this ordinance.

(C) *Application for Permit.* Permit applications must be submitted to the Zoning Administrator on forms provided by the Zoning Administrator. The permit application must include the following as applicable:

(1) A site plan drawn to scale showing the location, all pertinent dimensions, and elevations of the lot and existing or proposed buildings, structures; and significant natural features having an influence on the permit.

(2) Location of the foregoing and fill or storage of materials in relation to the stream channel.

(3) Copies of any required municipal, county, state or federal permits or approvals.

(4) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

(D) *Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use.* No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.

(E) *Certification.* The applicant is 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. Floodproofing measures must be certified by a registered professional engineer or registered architect.

(F) *Record of First Floor Elevation.* The Zoning Administrator must 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 must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.

(G) *Notifications for Watercourse Alterations.* Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

(H) *Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations.* As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

#### § 153.060 VARIANCES.

(A) *Variance Applications.* An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and the following provisions. Upon filing with the City Administrator of an appeal from a decision of the Zoning Administrator, or an application for a variance, the City Council shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law.

(B) *Submittal of Hearing Notices to the Department of Natural Resources (DNR).* The City Administrator shall submit by mail to the DNR a copy of the application and hearing notice for proposed variance sufficiently in advance to provide at least ten days' notice of the hearing. The application and notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(C) The City Council shall arrive at a decision on the appeal or variance within 60 days. In passing upon an appeal, the City Council may, so long as the action is in conformity with the provision of this chapter, 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 reason for its decision. In granting a variance, the City Council may prescribe appropriate conditions and safeguards such as those specified in this chapter which are in conformity with the purpose of this chapter.

(D) *Adherence to State Floodplain Management Standards.* A variance must not allow a use that is not allowed 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.

(E) *General Considerations.* The City Council may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:

- (1) The potential 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;
- (3) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (4) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (5) The importance of the services to be provided by the proposed use to the community;
- (6) The requirements of the facility for a waterfront location;
- (7) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (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 Land Use Plan and flood plain 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.

(F) *Additional Variance Criteria.* The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (1) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (2) Variances may 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.
- (3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(G) *Submittal of Final Decisions to the DNR.* A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(H) *Flood Insurance Notice.* The Zoning Administrator must 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 base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.

(I) *Record-Keeping.* The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

#### § 153.065 **CONDITIONAL USES.**

(A) *Administrative Review.* An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and the following provisions. The Planning Commission shall hear and make recommendations on applications for conditional uses permissible under this chapter. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

(B) *Submittal of Hearing Notices to the Department of Natural Resources (DNR).* The Zoning Administrator shall submit a copy of the conditional use application and hearing notice for proposed conditional use to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The application and notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(C) Following the Planning Commission's recommendations, the City Council shall arrive at a decision on a conditional use within 60 days. In granting a conditional use permit, the City Council may prescribe appropriate conditions and safeguards which are in conformity with the purposes of this chapter.

(D) *Factors Used in Decision-Making.* In passing upon conditional use applications, the Planning Commission and City Council must consider all relevant factors specified in other sections of this ordinance, and those factors identified in Section 153.060(E) of this ordinance.

(E) *Conditions Attached to Conditional Use Permits.* The Planning Commission and City Council may attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

(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, dikes, levees, and other protective measures.

(5) Floodproofing measures in accordance with the State Building Code and this ordinance. The applicant must submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

(F) *Submittal of Final Decisions to the DNR.* A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

#### ***NONCONFORMITITES***

## § 153.070 NONCONFORMITIES.

(A) *Continuance of Nonconformities.* A use, structure, or occupancy of land 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 153.011 of this ordinance, are subject to the provisions of Sections 153.070(B) through (G) of this ordinance.

(B) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 153.070(C) below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.

(C) Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP1 thru FP4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 153.070(D) and (H) below.

(D) If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of any nonconforming structure, that shall be considered substantial improvement, and the entire structure must meet the standards of Sections 153.020 through 153.023 and Sections 153.025 through 153.028 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor.

(E) If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance. The Assessor must notify the Zoning Administrator in writing of instances of nonconformities that have been discontinued for a period of more than one year.

(F) If any nonconformity is substantially damaged, as defined in Section 153.011 of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 153.020 through 153.023 or Sections 153.025 through 153.028 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.

(G) If any nonconforming use or structure experiences a repetitive loss, as defined in Section 153.011 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.

(H) Any substantial improvement, as defined in Section 153.011 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Sections 153.020 through 153.023 or Sections 153.025 through 153.028 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

## AMENDMENTS

### § 153.075 AMENDMENTS.

(A) *Floodplain Designation – Restrictions on Removal.* The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation

and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

(B) *Amendments Require DNR Approval.* All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.

(C) *Map Revisions Require Ordinance Amendments.* The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 153.005 of this ordinance.

### ***PENALTIES AND ENFORCEMENT***

#### **§ 153.999 PENALTIES AND ENFORCEMENT.**

(A) *Violation Constitutes a Misdemeanor.* 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 uses) constitute a misdemeanor and will be punishable as defined by law.

(B) *Other Lawful Action.* Nothing in this ordinance restricts the City of Windom from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.

(C) *Enforcement.* Violations of the provisions of this ordinance will be investigated and resolved in accordance with the following provisions. When a violation of this chapter is either discovered by or brought to the attention of the Zoning Administrator, he/she shall immediately investigate the situation and document the nature and extent of the violation. As soon as it is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources Office along with the City's plan of action to correct the violation to the degree possible. The Zoning Administrator shall notify the suspected party of the requirements of this chapter and the nature and extent of the suspected violation. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction of development immediately halted until a proper permit of approval is granted by the City. 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; 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.

(3) The Zoning Administrator shall also, upon the lapse of the specified response period, notify the landowner to restore the land to the condition which existed prior to the violation of this chapter.

(4) In responding to a suspected ordinance violation, the Zoning Administrator and the City Council 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 City of Windom must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

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**THE CITY COUNCIL OF THE CITY OF WINDOM, MINNESOTA, FURTHER ORDAINS:**

**EFFECTIVE DATE: This ordinance, or an approved Title and Summary of this ordinance, shall be published in the COTTONWOOD COUNTY CITIZEN; and this ordinance shall be in full force and effect immediately upon publication.**

ADOPTED AND PASSED by the City Council of the City of Windom, Minnesota, this 4th day of October, 2016.

\_\_\_\_\_  
Corey Maricle, Mayor

ATTEST:

\_\_\_\_\_  
Steven Nasby, City Administrator

1<sup>st</sup> Reading: September 20, 2016  
2<sup>nd</sup> Reading: October 4, 2016  
Adoption: October 4, 2016  
Published: October 12, 2016