

Original

Section 21 Floodplain District

21.00 Floodplain District

21.01 Statutory Authorization, Findings of Fact and Purpose.

1. **Statutory Authorization:** The Legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 394 for counties has delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the County Commissioners of Lac qui Parle County, Minnesota does ordain as follows:
 - A. The flood hazard areas of Lac qui Parle 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.
 - B. Methods Used to Analyze Flood Hazards. This Ordinance is based upon a reasonable method of analyzing flood hazards, which is consistent with the standards established by the Minnesota Department of Natural Resources.
 - C. 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.
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 21.01 (2) (A) by provisions contained herein.

21.02 General Provisions.

1. **Lands to Which Ordinance Applies.** This Ordinance shall apply to all lands within the jurisdiction of Lac qui Parle County 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. **Establishment of Official Zoning Map.** 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 for Lac

qui Parle County, Minnesota and Incorporated Areas as prepared by the Federal Emergency Management Agency and dated March 16, 2006, and all Flood Insurance Rate Map Panels therein dated March 16, 2006. The Official Zoning Map shall be on file in the Office of the Lac qui Parle County Auditor and the Lac qui Parle County Zoning Administrator Office.

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.
4. **Interpretation.**
 - A. In the 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.
 - B. 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.
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.
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 and flood damages. This Ordinance shall not create liability on the part of Lac qui Parle 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.

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.
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.
 - A. **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.
 - B. **Basement** – means any area of a structure, including crawl spaces, having its floor or base sub grade (below ground level) on all four sides, regardless of the depth of excavation below ground level.
 - C. **Conditional 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:
 - (1) Certain conditions as detailed in the zoning ordinance exist.
 - (2) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
 - D. **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.
 - E. **Farm Fence** – A fence as defined by Minn. Statute §344.02 Subd. 1(a)-(d). A farm fence is not considered to be a structure under this ordinance. A zoning permit shall be required for fences in the Flood Fringe area of the Flood Plain that have the potential to “Obstruct Flood Flows” such as cyclone fences and rigid walls such as wood or concrete privacy fences. Other fences such as barb wire fences do not obstruct flood flows so they would not be regulated.
 - F. **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.
 - G. **Flood Frequency** – the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

- H. 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 for Lac qui Parle County.
- I. 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.
- J. 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.
- K. “FPR” – means “Flood Proofing Regulations”, as referenced in Section 21.10(4) (F)(5).
- L. 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. For fences being proposed in the designated floodway section of the flood plain, a Conditional Use Permit shall be required for fences that “Obstruct Flood Flows”.
- M. 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.
- N. 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.”
- O. Obstruction – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, stockpile, refuse, fill, structure, including restored wetland dikes/structures 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.
- P. Principal Use or Structure – means all uses or structures that are not accessory uses or structures.
- Q. 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.

- R. **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.

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

- T. **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 increase in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

- U. **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 21.09(3)(A) of this Ordinance and other similar items. A farm fence is not considered to be a structure.

- V. **Substantial Damage** – means damage of any origin sustained by a structure where the cost of restoring the structure to it’s before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

- W. **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 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.

X. Variance – means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community’s respective planning and zoning enabling legislation.

9. **Annexation.** The Flood Insurance Rate Map panels adopted by reference into Section 21.02 (2) above may include floodplain areas that lie outside of the corporate boundaries at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the unincorporated area after the date of adoption of this ordinance, the newly annexed floodplain lands shall be subject to the provisions of this ordinance immediately upon the date of annexation into the Lac qui Parle County Flood Plain Ordinance.

21.03 Establishment of Zoning Districts.

1. Districts.

- A. Floodway District. The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 21.02(2).
- B. Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe. The Flood Fringe District shall include those areas shown on the Flood Insurance Rate Map as adopted in Section 21.02(2) as being within Zones AE, AO, or AH but being located outside of the floodway.
- C. General Flood Plain District. The General Flood Plain District shall include those areas designated as Zone A or Zones AE, AO, or AH without a floodway on the Flood Insurance Rate Map adopted in Section 21.02(2).

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 21.04, 21.05 and 21.06 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- A. New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Ordinance and specifically Section 21.09.
- B. 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 21.11
- C. 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 21.10 of this Ordinance.

21.04 Floodway District (FW)

1. Permitted Uses.

- A. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting. A farm fence is a permitted use.
- B. Industrial-commercial loading areas, parking areas, and airport landing strips.
- C. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
- D. Residential lawns, gardens, parking areas, and play areas.

2. Standards for Floodway Permitted Uses.

- A. The use shall have a low flood damage potential.
- B. The use shall be permissible in the underlying zoning district if one exists.
- C. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

3. Conditional Uses.

- A. Structures accessory to the uses listed in 21.04(1) above and the uses listed in 21.04(3) (B-H) below.
- B. Extraction and storage of sand, gravel, and other materials.
- C. Marinas, boat rentals, docks, piers, wharves, and water control structures.
- D. Railroads, streets, bridges, utility transmission lines, and pipelines.
- E. Storage yards for equipment, machinery, or materials.
- F. Placement of fill or construction of fences that obstruct flood flows. This does not include farm fences.
- G. Recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provision of Section 21.09(3) of this Ordinance.
- H. Structural works for flood control such as levees, dikes (including restored/created wetlands) 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. Standards for Floodway Conditional Uses.

- A. **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 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.
- B. All floodway conditional uses shall be subject to the procedures and standards contained in Section 21.10(4) of this Ordinance.
- C. The conditional use shall be permissible in the underlying zoning district if one exists.
- D. Fill:
 - (1) 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.

- (2) 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.
- (3) As an alternative, and consistent with Subsection (2) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the County Recorder.

E. Accessory Structures.

- (1) Accessory structures shall not be designed for human habitation.
- (2) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - (a) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
 - (b) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- (3) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the FPR. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the FPR 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:
 - (a) 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;

- (b) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and
- (c) 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.

F. Storage of Materials and Equipment.

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

G. 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.

H. 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.

21.05 Flood Fringe District (FF)

- 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 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 21.05(2) and the “Standards for all Flood Fringe Uses” listed in Section 21.05(5)

2. Standards for Flood Fringe Permitted Uses.

- A. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
- B. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be internally flood proofed in accordance with Section 21.04(4)(E)(3).
- C. 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, unless said fill is specifically intended to elevate a structure in accordance with Section 21.05(2)(A) of this ordinance.
- D. The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
- E. The provisions of Section 21.05(5) of this Ordinance shall apply.

3. **Conditional Uses.** Any structure that is not elevated on fill or flood proofed in accordance with Section 21.05(2) (A-B) and/or any use of land that does not comply with the standards in Section 21.05(2)(C-D) shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Section 21.05(4) – 21.05(5) and 21.10(4) of this Ordinance.

4. Standards for Flood Fringe Conditional Uses.

- A. Alternative elevation methods other than the use of fill may be utilized to elevate a structure’s lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure’s basement or lowest floor if:
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 or architect as being in compliance with the general design standards of the FPR 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) 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
 - (b) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 and FP-4 classifications in the FPR and shall be used solely for building access, parking of vehicles or storage.
- B. Basements, as defined by Section 21.02(8)(A)(2) of this Ordinance, shall be subject to the following.

- (1) Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 - (2) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with Section 21.05(5)(C) of this Ordinance.
- C. 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 FPR. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the FPR 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.
- D. 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 the 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.
- E. 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) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.
- F. The provisions of Section 21.05(5) of this Ordinance shall also apply.