

## EXISTING ORDINANCE

### MARSHALL CITY CODE OF ORDINANCES CHAPTER 38 FLOODS ARTICLE 38-II FLOODPLAIN MANAGEMENT DIVISION 38-II-1 GENERALLY

#### **DIVISION 38-II-1 GENERALLY**

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#### **Section 38-21 Definitions**

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

~~*Accessory use or structure* means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.~~

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

~~*Conditional use* means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:~~

- ~~(a) Certain conditions as detailed in the zoning chapter exist, and~~
- ~~(b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.~~

~~*Equal degree of encroachment* means 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.~~

~~*Flood* means 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* means the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.~~

~~*Flood fringe* means that portion of the floodplain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe."~~

~~*Floodplain* means 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* means 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* means 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* means 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.~~

~~*Manufactured home* means 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."~~

~~*Obstruction* means 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.~~

~~*Principal use or structure* means all uses or structures that are not accessory uses or structures.~~

~~*Reach*, a hydraulic engineering term, means a longitudinal segment of a stream or river influenced by a natural or manmade 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* means 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 article, the term "recreational vehicle" shall be synonymous with the term "travel trailer/travel vehicle."~~

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

~~*Regulatory flood protection elevation* means 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.~~

~~*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, [means] 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 (a) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (b) any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued~~

designation as an "historic structure." For the purpose of this article, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.

~~Structure means 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, travel trailers/vehicles not meeting the exemption criteria specified in subsection 38-93(c)(1) and other similar items.~~

~~Variance means a modification of a specific permitted development standard required in an official control including this article 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.~~

(Ord. No. 621 2nd series, 7-27-2010)

~~Cross reference(s)—Definitions generally, § 1-2.~~

### **Section 38-22 Penalties For Violation Of Article**

- ~~(a) Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.~~
- ~~(b) Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include, but are not limited to:~~
- ~~(1) In responding to a suspected article violation, the zoning administrator and local government may utilize the full array of enforcement actions available to it including, but not limited to, prosecution and fines, injunctions, after-the fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to correct article violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.~~
  - ~~(2) When an article violation is either discovered by or brought to the attention of the zoning administrator, the zoning administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate department of natural resources and Federal Emergency Management Agency Regional Office along with the community's plan of action to correct the violation to the degree possible.~~
  - ~~(3) The zoning administrator shall notify the suspected party of the requirements of this article and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the zoning administrator may order the construction or development immediately halted until a proper permit or approval is granted by the community. If the construction or development is already completed, then the zoning administrator may either:
    - ~~a. Issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or~~
    - ~~b. Notify the responsible party to apply for an after-the fact permit/development approval within a specified period of time not to exceed 30 days.~~~~

~~(4) If the responsible party does not appropriately respond to the zoning administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this article and shall be prosecuted accordingly. The zoning administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this article.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-23 Statutory Authorization**

~~The legislature of the state has, in Minn. Stat. chs. 103F and 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the city council does ordain as provided in this article.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-24 Findings Of Fact**

~~The flood hazard areas of the city are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-25 Methods Used To Analyze Flood Hazards**

~~This article is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the state department of natural resources.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-26 Statement Of Purpose**

~~It is the purpose of this article to promote the public health, safety and general welfare and to minimize those losses described in section 38-24 by provisions contained in this article. This article 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.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-27 Interpretation**

- ~~(a) In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the council 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 and to submit technical evidence.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-28 Abrogation And Greater Restrictions**

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

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-29 Warning And Disclaimer Of Liability**

~~This article 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 article shall not create liability on the part of the city or any officer or employee of the city for any flood damages that result from reliance on this article or any administrative decision lawfully made under this article.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-30 Lands To Which Article Applies**

~~This article shall apply to all lands within the jurisdiction of the city shown on the official zoning map and/or the attachments thereto as being located within the boundaries of the floodway, flood fringe or general floodplain districts.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-31 Compliance With Article Provisions**

~~No new structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations which apply to uses within the jurisdiction of this article. Within the floodway, flood fringe and general floodplain districts, all uses not listed as permitted uses or conditional uses in sections 38-72 and 38-73 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 article and specifically section 38-93;~~
- ~~(b) Modifications, additions, structural alterations, normal maintenance and repair or repair after damage to existing non conforming structures and nonconforming uses of structures or land are regulated by the general provisions of this article and specifically section 38-55; and~~
- ~~(c) As-built elevations for elevated or floodproofed structures must be certified by ground surveys and floodproofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this article and specifically as stated in sections 38-51—38-54.~~

~~(Ord. No. 621 2nd series, 7-27-2010)~~

### **Section 38-32 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 article. The attached material shall include:

- (a) The flood insurance study, Lyon County, Minnesota and incorporated areas, and
- (b) Flood insurance rate map panels for Lyon County, Minnesota and Incorporated Areas numbered 27083C0304D, 27083C0306D, 27083C0307D, 27083C0308(D), 27083C0309D, 27083C0312D, 27083C0316D, 27083C0317D, and 27083C0330D. All of the aforementioned documents are dated November 26, 2010 and have been prepared by the Federal Emergency Management Agency. The official zoning map shall be on file in the office of the city engineer/zoning administrator.

{Ord. No. 621 2nd series, 7-27-2010; Ord. No. 723 2nd Series, § 1, 8-8-2017}

### **Section 38-33 Regulatory Flood Protection Elevation**

The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

{Ord. No. 621 2nd series, 7-27-2010}

### **Section 38-34 Severability**

If any section, clause, provision, or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

{Ord. No. 621 2nd series, 7-27-2010}

### **Section 38-35 Annexations**

The flood insurance rate map panels adopted by reference into section 38-32 may include floodplain areas that lie outside of the corporate boundaries of the city at the time of adoption of this article. If any of these floodplain land areas are annexed into the city after the date of adoption of this article, the newly annexed floodplain lands shall be subject to the provisions of this article immediately upon the date of annexation into the city.

{Ord. No. 621 2nd series, 7-27-2010}