

ORDINANCE NO. ____ - ____

**ORDINANCE AMENDING
MARSHALL CITY CODE OF ORDINANCES – CHAPTER 38, ARTICLE 38-II
RELATING TO FLOODPLAIN MANAGEMENT**

The Common Council of the City of Marshall does ordain as follows:

Section 1: City Code of Ordinances, Chapter 38-Floods, Article 38-II Floodplain Management, is hereby amended in Section 38-22, 38-23, 38-24, 38-26, 38-32 and 38-52 as follows:

**MARSHALL CITY CODE OF ORDINANCES
CHAPTER 38 FLOODS
ARTICLE 38-II FLOODPLAIN MANAGEMENT**

DIVISION 38-II-1 GENERALLY

Section 38-22 Definitions

Board of adjustment means City Council-Planning Commission.

Flood fringe means the portion of the one-percent annual chance floodplain located outside of the floodway. This district also includes any additional area encompassed by the horizontal extension of the RFPE, as described in Section 38-23(a)(2).

Regulatory floodplain means the geographic limits of the flood hazard areas regulated through this ordinance, which includes the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the Regulatory Flood Protection Elevation (RFPE) (as illustrated in Figure 2). This shall not include those areas protected by flood control structures which meet or exceed the standards contained in 44 CFR 5-65.10.

Commented [BM(1)]: See comment in 3.13. If you choose to omit the provision in 3.13, this should be deleted too.

Commented [BM(2)]: See comment in 3.13. If you choose to omit the provision in 3.13, this should be deleted too.

Section 38-23 Jurisdiction and Districts

- (a) **Lands to Which Ordinance Applies.** This ordinance applies to all lands within the jurisdiction of the City of Marshall within the boundaries of the Floodway, Flood Fringe and General Floodplain Districts.
- (1) The Floodway, Flood Fringe or General Floodplain Districts are overlay districts. The standards imposed in the overlay districts are in addition to any other requirements. In case of a conflict, the more restrictive standards will apply.
 - (2) Where a conflict exists between the floodplain limits illustrated on the official floodplain maps and actual field conditions (as illustrated in Figure 1), the Base Flood Elevation (BFE) shall be the governing factor in locating the outer boundaries of the one-percent annual chance floodplain.

Figure 1: The mapped floodplain may not always align with on-the-ground contour elevations.



~~(3) The regulatory limits of the district boundaries shall be further extended outward based on the horizontal extension of the Regulatory Flood Protection Elevation (RFPE) (Figure 2). Regulatory limits shall not be extended into areas protected by accredited flood control projects.~~

Commented [BM(3)]: This was based on a particularly challenging rule provision, and we've recently gotten direction from our legal counsel that we will no longer be considering this a required provision. We are considering this a higher standard. The city may feel free to omit this provision.

(c) Districts

- (1) Floodway District. Those areas within Zones AE delineated within floodway areas as shown on the Flood Insurance Rate Maps referenced in Section 38-23(b).
- (2) Flood Fringe District. Those areas within Zones AE on the Flood Insurance Rate Maps referenced in Section 38-23(b), but located outside of the floodway, as well as those areas of 1% annual chance of flood with average depth less than one foot. ~~This district also includes any additional area encompassed by the Regulatory Floodplain.~~
- (3) General Floodplain District. Those areas within Zone A areas that do not have a floodway delineated as shown on the Flood Insurance Rate Maps referenced in Section 38-23(b). ~~This district also includes any additional area encompassed by the Regulatory Floodplain.~~

Commented [BM(4)]: See comment in 3.13. If you choose to omit the provision in 3.13, the two provisions shown here in this section should be deleted too.

Section 38-24 Requirements for All Floodplain Districts

(c) Minimum Development Standards.

- (2) Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life shall be stored at or above the Regulatory Flood Protection Elevation (RFPE), floodproofed, or protected by other measures as approved by the Zoning Administrator. Storage of materials likely to cause pollution of the waters, such as sewage; sand; rock; wrecked and discarded equipment; dredged spoil; municipal, agricultural or industrial waste; and other wastes as further defined in Minnesota Statutes, section 115.01, are prohibited unless adequate safeguards approved by the Minnesota Pollution Control Agency are provided. For projects not requiring approvals by the Minnesota Pollution Control Agency, adequate safeguards must be approved by the Zoning Administrator prior to issuance of a permit.

Table 1. Summary of Permitting Requirements for Structures

Structure Type	Floodway	Flood Fringe**	Standards*
Accessory Structures – on fill	Only specific uses and types allowed – with CUP	Allowed with Permit	38-26(b)(1)a, via 38-26(3)d.2.
Accessory Structures – Alt. Elevation Methods	Only specific uses and types allowed – with CUP	Allowed with Permit	38-26(b)(2)b, via 38-26(b)(3)d.3.
Accessory Structures – Wet Floodproofing	Only specific uses and types allowed – with CUP	Allowed with Permit	38-26(b)(3)d.1.
Accessory Structures – Dry (watertight) Floodproofing	Only specific uses and types allowed – with CUP	Allowed with Permit	38-26(b)(2)c., via 38-26(b)(3)d.4.
Residential – on fill	Not allowed	Allowed with Permit	38-26(b)(1)a
Residential – Alt. Elevation Methods	Not allowed	Allowed with CUP	38-26(b)(2)a or b via 38-26(d)(1)
Residential – Basement Construction below RFPE	Not allowed	Only outside of 1% annual chance floodplain – with CUP	38-26(d)(3)
Residential – Dry (watertight) Floodproofing	Not allowed	Only outside of 1% annual chance floodplain – with CUP Not allowed	38-26(b)(2)e., via 38-26(d)(3)N/A
Non-Residential – on fill	Not allowed	Allowed with Permit	38-26(b)(1)a, via 38-26(b)(2)a
Non-Residential – Alt. Elevation Methods	Not allowed	Allowed with Permit	38-26(b)(2)b
Non-Residential – Dry (watertight) Floodproofing	Not allowed	Allowed with Permit	38-26(b)(2)c.

Commented [BM(5)]: See comment in 3.13. If you choose to omit the provision in 3.13, the two provisions shown here in this section should be deleted too.

Structure Type	Floodway	Flood Fringe**	Standards*
Non-residential—Basement Construction below RFPE	Not allowed	Only outside of 1% annual chance floodplain— with CUP	38-26(d)(2)

*Note – many of these standards are cross-referenced to avoid duplication

** Permit refers to a Building permit or Land Disturbance permit issued by the City of Marshall for related construction activity, or, when not required, a letter of approval from the Zoning Administrator.

Section 38-26 Flood Fringe District

(c) **Conditional Uses in Flood Fringe.** The following uses and activities may be permitted as conditional uses, subject to the standards in Sections 38-26(d) and 38-31(c), if otherwise allowed in the underlying zoning district:

~~(3) — Basement construction below the Regulatory Flood Protection Elevation (RFPE).~~

(d) **Standards for Conditional Uses in Flood Fringe.** In addition to the applicable standards detailed in Sections 38-24, 38-26(b) and 38-31(b):

~~(3) — With the exception of non-residential, dry floodproofed structures detailed in Section 38-26(b)(2)c, all basement construction below the Regulatory Flood Protection Elevation (RFPE) within the one percent annual chance floodplain is prohibited. Basements may be permitted in structures outside the one percent annual chance floodplain but within the regulatory floodplain, however, such spaces must be protected at least as high as the Regulatory Flood Protection Elevation, and must be built according to one of the following construction methods:~~

~~a. — meeting the basement construction guidance in FEMA Technical Bulletin 10-01, or~~

~~b. — meeting the dry floodproofing standards for non-residential structures detailed in Section 38-26(b)(2)c.~~

Commented [BM(6): For this one, as well as d.3 below, see comment in 3.13. If you choose to omit the provision in 3.13, the two provisions shown here should be deleted too.

Section 38-32 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:

(3) If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in Section 38-32(b), it may not be reconstructed except in conformity with the provisions of this ordinance. ~~Existing structures within the regulatory floodplain, but outside of the one percent annual chance floodplain, as detailed in Section 38-22(a)(3), are exempt from this provision.~~

Commented [BM(7): See comment in 3.13. If you choose to omit the provision in 3.13, this provision should be deleted too.

DIVISION 38-II-2 ADMINISTRATION AND ENFORCEMENT

Section 38-52 Board of Adjustment

A board of adjustment is hereby established. For the purpose of this article, the ~~City Council planning commission~~ shall constitute the board of adjustment.

Section 2: This Ordinance shall take effect after its passage and summary publication.

Passed and adopted by the Common Council this ____ day of _____, 20__.

THE COMMON COUNCIL

ATTEST:

Mayor of the City of Marshall, MN

City Clerk

Summary Ordinance Introduced on: _____

Ordinance Introduced on: _____

Final Passage on: _____
Summary Ordinance Published in the Marshall Independent: _____

