

Chapter 1040
GENERAL FLOODPLAIN ORDINANCE
(amended 10/25/16)

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

1.1 Statutory Authorization. The Legislature of the State of Minnesota has, in Minnesota Statutes Chapters 103F and Chapter 462 delegated the authority to local governmental units to adopt regulations designed to minimize flood losses. Minnesota Statute, Chapter 103F further stipulates that communities subject to recurrent flooding must participate and maintain eligibility in the National Flood Insurance Program. Therefore the City of Tonka Bay, Minnesota does ordain as follows:

1.2 Statement of Purpose. This ordinance regulates development in the flood hazard areas of the City of Tonka Bay. 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 and to maintain the Community's eligibility in the National Flood Insurance Program.

1.3 Warning of Disclaimer of Liability. This Ordinance does not imply that areas outside of the flood plain district 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 the City of Tonka Bay or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decisions lawfully made hereunder.

1.4 National Flood Insurance Program Compliance. This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the Community's eligibility in the National Flood Insurance Program.

1.5 Abrogation and Greater Restrictions. It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, 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 All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistencies only.

1.6 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.

SECTION 2.0 GENERAL PROVISIONS

2.1 Adoption of Flood Insurance Study and Flood Insurance Rate Map. The Flood Insurance Study, Volume 1 of 2 and Volume 2 of 2, Hennepin County, Minnesota, All Jurisdictions and the Flood Insurance Rate Map panels numbered 27053C0311F, 27053C0312F, 27053C0313F, and 27053C0314F for the City of Tonka Bay dated November 4, 2016, as developed by the Federal Emergency Management Agency, are hereby adopted by reference as the Official Flood Plain Zoning District Map and made a part of this ordinance. These materials are on file at City Hall.

2.2 Lands to Which Ordinance Applies. This Ordinance shall apply to all lands designated as flood plain within the jurisdiction of Tonka Bay. Flood plain areas within Tonka Bay shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH as shown on the Flood Insurance Rate Map adopted in Section 2.1 of this Ordinance.

2.3 Interpretation. The boundaries of the flood plain district shall be determined by scaling distances on the Official Flood Plain Zoning District Map. Where interpretation is needed as to the exact location of the boundaries of the flood plain district, the City Administrator/Zoning Administrator shall make the necessary interpretation based on the ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance and the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the community shall: 1) Require a flood plain evaluation consistent with Section 4.3 of this Ordinance to determine a 100-year flood elevation for the site; or 2) base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the flood plain.

2.4 Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

2.41 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.

- 2.42 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.
- 2.43 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.
- 2.44 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.
- 2.45 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 Hennepin County, Minnesota.
- 2.46 Flood Insurance Rate Map (FIRM) – an official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- 2.47 Flood Plain – the channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood. Flood plain areas within Tonka Bay shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH on the Flood Insurance Rate Map adopted in Section 2.1 of this Ordinance. The 100 year floodplain elevation for Lake Minnetonka is 931.5' (NGVD 1929) as established by the Minnehaha Creek Watershed District.
- 2.48 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.
- 2.49 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry or store the regional flood discharge.
- 2.50 Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

- 2.51 Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
- 2.52 Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, dredged spoil, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, stockpile of sand or gravel or other material, or matter in, along, across, or projecting into any channel, watercourse, lake bed, or regulatory flood plain which may impede, retard, or change the direction of flow, either in itself or by catching or collecting debris carried by floodwater.
- 2.53 Principal Use or Structure – all uses or structures that are not accessory uses or structures.
- 2.54 Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.
- 2.55 Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristics of what can be expected to occur on an average frequency in magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used on the Flood Insurance Rate Map.
- 2.56 Regulatory Flood Protection Elevation - The regulatory flood protection elevation shall be an elevation no lower than two feet 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. For purposes of this paragraph "regional flood" means the same as the 100 year floodplain elevation for Lake Minnetonka which is 931.5' (NGVD 1929).
- 2.57 Special Flood Hazard Area – a term used for flood insurance purposes synonymous with "One Hundred Year Floodplain."

- 2.58 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.
- 2.59 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, travel trailers/vehicles not meeting the exemption criteria specified in Section 12.1 of this Ordinance and other similar items.
- 2.60 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.
- 2.61 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:
- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

- (b) Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Ordinance, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1.

SECTION 3.0 CONFLICT WITH PRE-EXISTING ZONING REGULATIONS AND GENERAL COMPLIANCE

3.1 The Flood Plain District as Overlay Zoning District. The flood plain zoning district shall be considered an overlay zoning district to all existing land use regulations of the Community. The uses permitted in Sections 4.0 and 5.0 of this Ordinance shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this Ordinance shall apply in addition to other legally established regulations of the Community and where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall apply.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, repaired, maintained, 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 and Flood Fringe, all uses not listed as permitted uses in Section 4.0 shall be prohibited. In addition, a caution is provided here that:

- 3.21 New manufactured homes, replacement manufactured homes and certain recreational vehicles are subject to the general provisions of this Ordinance and specifically Sections 4.0 and 12.0;
- 3.22 Modifications, repair and maintenance, additions, structural alterations 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 9.0; and
- 3.23 As-built elevations for elevated structures must be certified by elevation surveys as stated in Section 7.0 of this Ordinance.

SECTION 4.0 PERMITTED USES AND STANDARDS

4.1 Establishment of Zoning Districts.

- 4.11 General Floodplain District. The General Floodplain District includes those areas designated as Zone A or Zones AE, AO, or AH without a floodway on the Flood Insurance Rate Map adopted in Section 2.3

4.12 Floodway District. The Floodway District shall include those areas at or below the respective Ordinary High Water elevations for Lake Minnetonka and unnamed basin #27-908W. Ordinary High Water elevation shall be as defined in Minnesota Statute, Section 103G.005, Subd. 14.

4.13 Flood Fringe District. The Flood Fringe District shall include those areas shown on the Flood Insurance Rate Map panels as adopted in Section 2.2 as being within Zone AE but being located outside of the floodway. The 100 year floodplain elevation for Lake Minnetonka is 931.5' (NGVD 1929) as established by the Minnehaha Creek Watershed District.

4.2 Permitted Uses in the Flood Plain. The following uses of land are permitted uses in the flood plain district:

4.21 Any use of land which does not involve a structure, a fence, an addition to the outside dimensions to an existing structure (including a fence) or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.

4.22 Any use of land involving the construction of new structures, a fence, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure (including a fence) or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the flood plain. These uses shall be subject to the development standards in Section 4.3 of this Ordinance and the flood plain districting criteria in Section 4.1 of this Ordinance for determining floodway and flood fringe boundaries.

4.23 Recreational vehicles are regulated by Section 12.0 of this Ordinance.

4.3 Standards for Flood Plain Permitted Uses.

4.31 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.

4.32 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested. For the purposes of this paragraph "100 year flood elevation" means the same as the 100 year floodplain elevation for Lake Minnetonka which is 931.5' (NGVD 1929). Fill impacts to the 100 year flood elevation must be offset by an equal amount of excavation between 929.4' (OWH) and 931.5' in an area contiguous to Lake Minnetonka in order to attain no net loss of floodplain storage.

4.33 Storage of Materials and Equipment:

- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the regulatory flood protection elevation.

4.34 No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.

4.35 All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation must be no lower than one foot below the regulatory flood protection elevation and shall

extend at such elevation at least 15' beyond the limits of the structure constructed thereon. All buildings within the floodplain shall have the lowest door or window opening at an elevation of at least 933.5' (NGVD 1929).

- 4.36 All Uses. Uses that do not have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation to lands outside of the flood plain shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance, the Board of Adjustment shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.
- 4.37 Commercial and Manufacturing Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- 4.38 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
- 4.39 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- 4.40 Floodproofing. Conditional Use. The City Council may approve special floodproofing measures for single family residential and accessory uses

in flood fringe areas adjacent to and outside of floodways by a Conditional Use Permit as provided under the Minnesota Department of Natural Resources Rule 6120.5800 Subp. 4.B and amendments thereto, the Minnesota State Building Code, Chapter 1335, Parts 1335.0020 to 1335.3100 and amendments thereto, 44 Code of Federal Regulations 60.3 (c) (5) and the Tonka Bay City Code Section 1003. Floodproofing measures may be considered under this section where existing single family residential and accessory uses, small lot sizes, streets or utilities are at elevations where strict compliance with regulations governing finished fill elevations is impractical. Floodproofing measures must be certified by a registered professional engineer or registered architect.
(amended 10/25/16)

4.4 Permitted Uses in the Floodway. The following uses, subject to the standards set forth in Section 4.5, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- 4.41 Open space uses, including but not limited to picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, hunting and fishing areas
- 4.42 Residential lawns, gardens
- 4.43 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.

4.5 Standards for Floodway Permitted Uses.

- 4.51 The use must have a low flood damage potential.
- 4.52 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.

4.6 Conditional Uses in the Floodway. The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 10.4 of this ordinance and further subject to the standards set forth in Section 4.64, if otherwise allowed in the underlying zoning district or any applicable overlay district.

- 4.61 Marinas, boat rentals, permanent docks, piers, wharves, and water control structures.
- 4.62 Storage yards for equipment, machinery, or materials.
- 4.63 Placement of fill or construction of fences that obstruct flood flows.

4.64 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) 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.

4.7 Permitted Uses in the Flood Fringe. Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections 4.8. 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.

4.8 Standards for Flood Fringe Permitted Uses.

- 4.81 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.
- 4.82 Accessory Structures. As an alternative to the fill requirements of Section 4.81, structures accessory to the uses identified in Section 4.7 may be permitted to be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:
 - (a) The accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.
 - (b) 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

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

(1) 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

(2) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

4.83 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 4.81 of this ordinance, or if allowed as a conditional use under Section 4.9 below.

4.84 The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation. All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.

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

4.86 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.

4.87 For all new subdivisions, 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 City.

4.88 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.

4.89 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.

4.9 Conditional Uses in the Flood Fringe. 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 10.4 of this ordinance.

4.91 Any structure that is not elevated on fill or floodproofed in accordance with Sections 4.81 and 4.82 of this ordinance.

4.92 Storage of any material or equipment below the regulatory flood protection elevation.

4.93 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 4.81 of this ordinance.

4.94 Standards for Flood Fringe Conditional Uses.

4.941 The standards listed in Sections 4.84 through 4.89 apply to all conditional uses.

4.942 Basements, as defined by Section 2.42 of this ordinance, are subject to the following:

(a) Residential basement construction is not allowed below the regulatory flood protection elevation.

(b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry floodproofed in accordance with Section 4.95 of this ordinance.

4.95 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.

- 4.96 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.
- (a) 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.
 - (b) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the City.
 - (c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.
- 4.97 For all new subdivisions, 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.

SECTION 5.0 UTILITIES, RAILROADS, ROADS AND BRIDGES IN THE FLOOD PLAIN DISTRICT

5.1 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.

5.2 Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 4.0 and 5.0 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.

5.3 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.

SECTION 6.0 SUBDIVISIONS

6.1 No land shall be subdivided and no manufactured home park shall be developed or expanded where the site is determined to be unsuitable by the City Council of Tonka Bay for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. The City Council of Tonka Bay shall review the subdivision/development proposal to insure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.

6.2 In the flood plain district, applicants for subdivision approval or development of a manufactured home park or manufactured home park expansion shall provide the information required in this Ordinance. The City Administrator/Zoning Administrator shall evaluate the proposed subdivision or mobile home park development in accordance with the standards established in Sections 4.2 and 5.0 of this Ordinance.

6.3 For all subdivisions in the flood plain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents. Road access both to the subdivision and to the individual building sites no lower than two (2) 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 City. 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.

6.4 For all subdivisions in the floodplain, all new construction and substantial improvements (including the placement of manufactured homes) must be:

- (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.

6.5 Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

SECTION 7.0 ADMINISTRATION

7.1 Permit Required. A Permit issued by the City Administrator/Zoning Administrator shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building or structure or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system, prior to the change or extension of a nonconforming use, prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source, prior to the placement of fill, excavation of materials or the storage of materials or equipment within the flood plain, and prior to the relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.

7.2 State and Federal Permits. Prior to granting a permit, the City Administrator/Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.

7.3 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:

- (a) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.

- (b) Location of fill or storage of materials in relation to the stream channel.
- (c) Copies of any required municipal, county, state or federal permits or approvals.
- (d) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

7.4 Certification of Lowest Floor Elevations. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. The City Administrator/Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations or additions to existing structures in the flood plain district.

7.5 Notifications for Watercourse Alterations. The City Administrator/Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

7.6 Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

SECTION 8.0 VARIANCES

8.1 A 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 and this Ordinance.

8.2 The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations of the Community, and the criteria specified in the respective enabling legislation which justified the granting of the variance. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

8.21 Variances shall not be issued by the City within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

8.22 Variances may only be issued by the City 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.

8.23 Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

8.3 Variances from the provisions of this Ordinance may be authorized where the Board of Adjustment has determined the variance will not be contrary to the public interest and the spirit and intent of this Ordinance. No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the regulatory flood protection elevation. Variances may be used to modify permissible methods of flood protection.

8.4 The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. A copy of all decisions granting a variance shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

8.5 Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this Community's Official Controls and also Minnesota Statutes.

8.6 Flood Insurance Notice and Record Keeping. The zoning administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. This Community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

8.7 General Considerations. The City may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) 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;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and.
- (l) Any other relevant information which may be presented to the City.

SECTION 9.0 NONCONFORMITIES

A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.831(b) of this Ordinance, shall be subject to the provisions of Sections 9.1 – 9.4 of this Ordinance.

9.1 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

9.2 A structural alteration within the inside dimensions of a nonconforming use or structure is permissible provided it utilizes flood resistant materials so as not to result in increasing the flood damage potential of that use or structure. A structural addition to a structure must be elevated to the regulatory flood protection elevation in accordance with Section 4.25 of this Ordinance.

9.3 The cost of all structural alterations or additions both inside and outside of a structure to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the Community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of Section 4.0 of this Ordinance for new structures.

9.4 If any nonconforming use of a structure or land or nonconforming structure is substantially damaged, as defined by Section 2.53 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The City Council of Tonka Bay may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this Ordinance.

9.5 If a substantial improvement occurs, as defined in Section 2.54 of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition (as required by Section 9.2 above) and the existing nonconforming building must meet the requirements of Section 4.0 of this Ordinance for new structures, depending upon whether the structure is in the floodway or flood fringe, respectively.

SECTION 10.0 PENALTIES FOR VIOLATION

A 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 variance) shall constitute a misdemeanor.

10.1 In responding to a suspected ordinance violation, the City Administrator/Zoning Administrator and the Community 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 ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

10.2 When an ordinance violation is either discovered by or brought to the attention of the City Administrator/Zoning Administrator, the City Administrator/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.

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

10.4 If the responsible party does not appropriately respond to the City Administrator/Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The City Administrator/Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition that existed prior to the violation of this Ordinance.

SECTION 11.0 AMENDMENTS

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

SECTION 12.0 TRAVEL TRAILERS AND TRAVEL VEHICLES

Recreational vehicles that do not meet the exemption criteria specified in Section 12.1 below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 12.3-12.4 below.

12.1 Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 12.2 below and further they meet the following criteria:

12.11 Have current licenses required for highway use.

12.12 Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.

12.13 The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

12.2 Areas Exempted For Placement of Recreational Vehicles:

12.21 Individual lots or parcels of record.

12.22 Existing commercial recreational vehicle parks or campgrounds.

12.23 Existing condominium type associations.

12.3 Recreational vehicles exempted in Section 12.1 lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in Sections 4.0 of this Ordinance. There shall be no development or improvement on the parcel or attachment to the recreation vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.

12.4 New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

12.41 Any new or replacement recreational vehicle will be allowed in the floodway or flood fringe districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation determined in accordance with the provisions of Section 4.3 of this Ordinance and proper elevated road access to the site exists in accordance with Section 4.0 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.

12.42 All new or replacement recreational vehicles not meeting the criteria of 12.41 above may, as an alternative, be allowed if in accordance with the following provisions. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate that the provisions of Sections 12.11 and 12.12 of this Ordinance will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 4.28 of this Ordinance.

Section 2. This ordinance shall become effective the day following after its passage and publication, as required by law.