

## Chapter 78 - SHORELAND-WETLAND ZONING

Footnotes:

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**Editor's note**— Ord. No. 719, adopted June 17, 2014, amended ch. 78 in its entirety to read as herein set out. Former ch. 78, §§ 78-1—78-161, pertained to similar subject matter, and derived from Code 1969, § 15.23.

**Cross reference**— Buildings and building regulations, ch. 18; environment, ch. 30; historic preservation, ch. 42; planning, ch. 66; signs, ch. 82; streets, sidewalks and other public places, ch. 90; vegetation, ch. 102; waterways, ch. 106.

## ARTICLE I. - IN GENERAL

## Sec. 78-1. - Finding of fact and purpose.

Uncontrolled use of the shoreland-wetlands and pollution of the navigable waters of the city would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The state legislature has delegated responsibility to all municipalities to:

- (1) Promote the public health, safety, convenience and general welfare;
- (2) Maintain the stormwater and floodwater storage capacity of wetlands;
- (3) Prevent and control water pollution by preserving wetlands, which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
- (5) Prohibit certain uses detrimental to the shoreland-wetland area; and
- (6) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth-moving activities.

(Ord. No. 719, 6-17-14)

## Sec. 78-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All distances, unless otherwise specified, shall be measured horizontally.

*Accessory structure or use* means a detached subordinate structure or a use that is clearly incidental to and customarily found in connection with the principle structure or use to which it is related and that is located on the same lot as that of the principle structure or use.

*Boathouse*, as defined in Wis. Stats. § 30.121(1), means a permanent structure used for the storage of watercraft and associated materials and includes all structures that are totally enclosed and have roofs or walls or any combination of structural parts.

*Class 2 public notice* means publication of a public hearing notice under Wis. Stats. ch. 985 in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.

*Conditional use* means a use permitted by this chapter provided that certain conditions specified in this chapter are met and that a permit is granted by the plan commission or, where appropriate, the planning agency designated by the city.

*Department* means the state department of natural resources.

*Development* means any manmade change to improved or unimproved real estate, including but not limited to:

- (1) The construction of buildings, structures or accessory structures;
- (2) The construction of additions or substantial alterations to buildings, structures or accessory structures;
- (3) The placement of buildings or structures;
- (4) Ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and
- (5) The deposition or extraction of earthen materials.

*Drainage system* means one or more artificial ditches, tile drains or similar devices that collect surface runoff or groundwater and convey it to a point of discharge.

*Environmental control facility* means any facility, temporary or permanent, reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting, or allegedly not meeting, acceptable pollution control standards or that are to be supplemented or replaced by other pollution control facilities.

*Fixed houseboat*, as defined in Wis. Stats. § 30.121(1), means a structure not actually used for navigation, which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

*Navigable waters* means Lake Superior, Lake Michigan, all natural inland lakes within the state, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters that are navigable under the laws of this state. Under Wis. Stats. § 144.26(2)(d), notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Wis. Stats. § 61.351 or 62.231 and Wis. Admin. Code ch. NR 117, do not apply to lands adjacent to farm drainage ditches if:

- (1) Such lands are not adjacent to a natural navigable stream or river;
- (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- (3) Such lands are maintained in nonstructural agricultural use.

The state supreme court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. For example, a stream navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons.

*Ordinary high-water mark* means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

*Planning agency* means the municipal plan commission created under Wis. Stats. § 62.23(1), a board of public land commissioners, or a committee of the council that acts on matters pertaining to planning and zoning.

*Principle building* means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch or deck.

*Shoreland* means lands as defined by Wis Stats. § 59.692(1)(b), including within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage, and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

*Shoreland setback area*, as defined in Wis Stats. § 59.692(1)(bn), means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this chapter.

*Shoreland-Wetland District* means the zoning district created in this chapter, comprised of shorelands that are designated as wetlands on the wetlands inventory maps adopted and made a part of this chapter.

*Unnecessary hardship* means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this chapter.

*Variance* means an authorization granted by the board of appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this chapter.

*Wetland alteration* means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

*Wetlands* means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and that have soils indicative of wet conditions.

(Ord. No. 719, 6-17-14)

**Cross reference**— Definitions generally, § 1-2.

Sec. 78-3. - Compliance.

The use of wetlands and the alteration of wetlands within the shoreland area of the city shall be in full compliance with the terms of this chapter and other applicable local, state or federal regulations. However, see article IV of this chapter for the standards applicable to nonconforming uses. All permitted development shall require the issuance of a site plan approval unless otherwise expressly excluded by a provision of this chapter.

(Ord. No. 719, 6-17-14)

Sec. 78-4. - Municipalities and state agencies regulated.

Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this chapter and obtain all necessary permits. State agencies are required to comply if Wis. Stats. § 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the state department of transportation are exempt when Wis. Stats. § 30.12(4)(a) applies.

(Ord. No. 719, 6-17-14)

Sec. 78-5. - Abrogation and greater restrictions.

- (a) This chapter supersedes all the provisions of any municipal zoning ordinance enacted under Wis. Stats. §§ 61.35, 62.23 or 87.30, which relates to floodplains and shoreland-wetlands; except that where another city zoning ordinance is more restrictive than this chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- (c) Lands within the Shoreland Zoning District are subject to all applicable provisions of the City of Fort Atkinson's Municipal Code. Where the provisions of this chapter are more restrictive than other regulations in the Municipal Code, the provisions of this chapter shall apply.

(Ord. No. 719, 6-17-14)

Sec. 78-6. - Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the city and shall not be deemed a limitation or repeal of any other powers granted by state statute. Where a provision of this chapter is required by a standard in Wis. Admin. Code ch. NR 117, and where the provision of this chapter is unclear, the provision shall be interpreted in light of ch. NR 117 standards in effect on the date of the adoption of this chapter or in effect on the date of the most recent text amendment to this chapter.

(Ord. No. 719, 6-17-14)

#### Sec. 78-7. - Applicability of Shoreland District regulations.

The Shoreland Zoning District regulations apply only to the following shorelands:

- (1) A shoreland that was annexed by the City of Fort Atkinson after May 7, 1982, and that prior to annexation was subject to a county shoreland zoning ordinance under Wis. Stats. § 59.692; and
- (2) A shoreland that before incorporation by the City of Fort Atkinson was a part of a town that was subject to a county shoreland zoning ordinance under Wis. Stats. § 59.692 if the date of incorporation was after April 30, 1994.

(Ord. No. 719, 6-17-14)

#### Sec. 78-8. - Enforcement and penalties.

Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this chapter in violation of the provisions of this chapter, by any person (including building contractors or their agents) shall be deemed a violation. The zoning administrator shall refer violations to the city planning commission and the district attorney, corporation counsel or city attorney, who shall prosecute such violations. Any person who violates or refuses to comply with any of the provisions of this chapter shall be subject to section 1-10. Every violation of this chapter is a public nuisance, and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the city, the state, or any citizen thereof pursuant to Wis. Stats. § 87.30(2).

(Ord. No. 719, 6-17-14)

#### Sec. 78-9. - Severability

Should any portion of this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

(Ord. No. 719, 6-17-14)

Secs. 78-10—78-40. - Reserved.

## ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

*Footnotes:*

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**Cross reference**— *Administration, ch. 2.*

### DIVISION 1. - GENERALLY

Sec. 78-41. - Zoning administrator.

- (a) *Appointed.* The zoning administrator is appointed to be the administrator for the purpose of administering and enforcing this chapter.
- (b) *Duties, powers.* The zoning administrator shall have the following duties and powers:
  - (1) Advise applicants as to the provisions of this chapter and assist them in preparing permit applications and appeal forms.
  - (2) Issue permits and certificates of compliance and inspect properties for compliance with this chapter.
  - (3) Keep records of all permits issued, inspections made, work approved and other official actions.
  - (4) Have access to any structure or premises between the hours of 8:00 a.m. and 6:00 p.m. for the purpose of performing these duties.
  - (5) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within ten days after they are granted or denied, to the appropriate district office of the department.
  - (6) Investigate and report violations of this chapter to the appropriate city planning agency and the district attorney, corporation counsel or city attorney.

(Ord. No. 719, 6-17-14)

**Cross reference**— Officers and employes, § 2-96 et seq.

Secs. 78-42—78-60. - Reserved.

### DIVISION 2. - PERMITS AND CERTIFICATES OF COMPLIANCE

Sec. 78-61. - Plan approval.

- (a) *When required.* Unless another section of this chapter specifically exempts certain types of development from this requirement, a site plan approval shall be obtained from the plan commission before any new development or any change in the use of an existing building or structure is initiated.
- (b) *Application.* An application for a site plan approval shall be made to the zoning administrator and shall include, for the purpose of proper enforcement of this chapter, the following information:
- (1) *General information.*
- a. Name, address and telephone number of the applicant, property owner and contractor, where applicable.
  - b. Legal description of the property and a general description of the proposed use or development.
  - c. Whether or not a private water supply or sewage system is to be installed.
- (2) *Site development plan.* The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:
- a. Dimensions and area of the lot;
  - b. Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways;
  - c. Description of any existing or proposed on-site sewage systems or private water supply systems;
  - d. Location of the ordinary high-water mark of any abutting navigable waterways;
  - e. Boundaries of all wetlands;
  - f. Existing and proposed topographic and drainage features and vegetative cover;
  - g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
  - h. Location of existing or future roads; and
  - i. Specifications and dimensions for areas of proposed wetland alteration.
- (c) *Expiration.* All permits issued under the authority of this chapter shall expire 12 months from the date of issuance.

(Ord. No. 719, 6-17-14)

Sec. 78-62. - Conditional use permits.

- (a) *Application.* Any use listed as a conditional use in this chapter shall be permitted only after an application has been submitted to the zoning administrator and a conditional use permit has been granted by the plan commission following the procedures in sections 78-93—78-95.
- (b) *Conditions.* Upon consideration of the permit application and the standards applicable to the conditional uses designated in section 78-128, the plan commission shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this chapter, as are necessary to further the purposes of this chapter as listed in section 78-1. Such conditions may include specifications for, without limitation because of specific enumeration:
- (1) Type of shore cover;
  - (2) Erosion controls;
  - (3) Increased setbacks;
  - (4) Specific sewage disposal and water supply facilities;
  - (5) Landscaping and planting screens;
  - (6) Period of operation;
  - (7) Operational control;
  - (8) Sureties;
  - (9) Deed restrictions;
  - (10) Location of piers, docks, parking areas and signs; and
  - (11) Type of construction.

To secure information upon which to base its determination, the board of appeals may require the applicant to furnish, in addition to the information required for a plan approval, other pertinent information necessary to determine if the proposed use is consistent with the purpose of this chapter.

(Ord. No. 719, 6-17-14)

Sec. 78-63. - Certificates of compliance.

- (a) Except where no plan approval or conditional use permit is required, no land shall be occupied or used and no building constructed, altered, added to, modified, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator subject to the following provisions:
- (1) The certificate of compliance shall show that the building or premises or part thereof and the proposed use thereof conform to the provisions of this chapter.
  - (2) Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.

- (3) The certificate of compliance shall be issued within ten days after notification of the completion of the work specified in the plan approval or conditional use permit, provided the building or premises and proposed use thereof conform with all the provisions of this chapter.
- (b) The zoning administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the council.
- (c) Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of adoption of the ordinance from which this chapter is derived, certifying after inspection the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this chapter.

(Ord. No. 719, 6-17-14)

#### Sec. 78-64. - Fees.

The council may, by resolution, adopt fees for the following:

- (1) Plan approval.
- (2) Certificates of compliance.
- (3) Public hearings.
- (4) Legal notice publications.
- (5) Conditional use permits.
- (6) Rezoning petitions.

(Ord. No. 719, 6-17-14)

#### Sec. 78-65. - Recording.

Where a site plan or conditional use permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.

(Ord. No. 719, 6-17-14)

#### Sec. 78-66. - Revocation.

Where the conditions of a site plan approval or conditional use permit are violated, the permit shall be revoked by the board of appeals.

(Ord. No. 719, 6-17-14)

#### Secs. 78-67—78-90. - Reserved.

## DIVISION 3. - BOARD OF APPEALS

*Footnotes:*

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**Cross reference**— *Boards, commissions and committees, § 2-301 et seq.*

## Sec. 78-91. - Appointment.

The city council shall appoint a board of appeals under Wis. Stats. § 62.23(7)(e), consisting of five members subject to confirmation by the council. The board of appeals shall adopt rules for the conduct of its business as required by Wis. Stats. § 62.23(7)(e)3.

(Ord. No. 719, 6-17-14)

## Sec. 78-92. - Powers and duties.

The board of appeals:

- (1) Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this chapter.
- (2) Shall hear and decide applications for conditional use permits.
- (3) May authorize upon appeal a variance from the dimensional standards of this chapter where an applicant convincingly demonstrates:
  - a. That literal enforcement of the terms of this chapter will result in unnecessary hardship for the applicant;
  - b. That the hardship is due to special conditions unique to the property and is not self-created or based solely on economic gain or loss;
  - c. That such variance is not contrary to the public interest as expressed by the purpose of this chapter; and
  - d. That such variance will not grant or increase any use of property prohibited in the zoning district.

(Ord. No. 719, 6-17-14)

## Sec. 78-93. - Appeals to the board.

Appeals to the board of appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the city affected by any order, requirement, decision, or determination of the zoning administrator or other administrative official. Such appeals shall be taken within a reasonable time, as

provided by the rules of the board by filing with the official whose decision is in question, and with the board of appeals, a notice of appeal specifying the reasons for the appeal. The zoning administrator or other official whose decision is in question shall transmit to the board all the papers constituting the record on the matter appealed.

(Ord. No. 719, 6-17-14)

Sec. 78-94. - Public hearings.

- (a) Before making a decision on an appeal or application, the board of appeals shall, within a reasonable period of time, hold a public hearing. The board shall give public notice of the hearing by publishing a class 2 notice under Wis. Stats. ch. 985, specifying the date, time and place of the hearing and the matters to come before the board. At the public hearing, any party may present testimony in person, by agent or by attorney.
- (b) A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the department at least ten days prior to all public hearings on issues involving shoreland-wetland zoning.

(Ord. No. 719, 6-17-14)

Sec. 78-95. - Decisions.

- (a) The final disposition of an appeal or application for a conditional use permit before the board of appeals shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the board chairperson. Such decision shall state the specific facts that are the basis of the board's determination and shall either affirm, reverse or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution, or grant the application for a conditional use.
- (b) A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the department within ten days after the decision is issued.

(Ord. No. 719, 6-17-14)

Sec. 78-96. - Amendment procedure.

The council may alter, supplement or change the district boundaries and the regulations contained in this chapter in accordance with the requirements of Wis. Stats. § 62.23(7)(d)2., Wis. Admin. Code, ch. NR 117, and the following:

- (1) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the department within five days of the submission of the proposed amendment to the planning agency.

- (2) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the planning agency, and a public hearing shall be held after class 2 notice as required by Wis. Stats. § 62.23(7)(d)(1)(b). The appropriate district office of the department shall be provided with written notice of the public hearing at least ten days prior to such hearing.
- (3) In order to ensure that this chapter will remain consistent with the shoreland protection objectives of Wis. Stats. § 144.26, the council may not rezone a wetland in a Shoreland-Wetland Zoning District, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
  - a. Stormwater and floodwater storage capacity;
  - b. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
  - c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  - d. Shoreline protection against erosion;
  - e. Fish spawning, breeding, nursery or feeding grounds;
  - f. Wildlife habitat; or
  - g. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (4) Where the district office of the department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in subsection (3) of this section, the department shall so notify the city of its determination either prior to or during the public hearing held on the proposed amendment.
- (5) The appropriate district office of the department shall be provided with:
  - a. A copy of the recommendation and report, if any, of the planning agency on a proposed text or map amendment, within ten days after the submission of those recommendations to the council.
  - b. Written notice of the action on the proposed text or map amendment within ten days after the action is taken.
- (6) If the department notifies the planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection (3) of this section, that proposed amendment, if approved by the council, shall not become effective until more than 30 days have elapsed since written notice of the city's approval was mailed to the department, as required by subsection (5)b. of this section. If within the 30-day period the

department notifies the city that the department intends to adopt a superseding shoreland-wetland zoning ordinance for the city as provided by Wis. Stats. §§ 62.231(6) and 61.351(6), the proposed amendment shall not become effective until the ordinance adoption procedure under Wis. Stats. §§ 62.231(6) or 61.351(6) is completed or otherwise terminated.

(Ord. No. 719, 6-17-14)

Secs. 78-97—78-125. - Reserved.

### ARTICLE III. - DISTRICT

Sec. 78-126. - Shoreland-Wetland Zoning Maps.

The following maps are hereby adopted and made part of this article and are on file in the office of the finance director:

- (1) State Wetland Inventory Maps stamped "FINAL" on October 10, 1990.
- (2) Floodplain zoning maps titled Floodplain Map and dated June 2, 2009.
- (3) United States Geological Survey Maps dated 1961 (revised 1971).

(Ord. No. 719, 6-17-14)

Sec. 78-127. - District boundaries.

(a) *Territory included.* The Shoreland-Wetland Zoning District includes all lands (referred to herein as shorelands) in the City of Fort Atkinson that are:

- (1) Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the city shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources Surface Water Data viewer available on the DNR website, or are shown on the United States Geological Survey Quadrangle Maps or other zoning base maps.
- (2) Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey Quadrangle Maps. Flood Hazard Boundary Maps, Flood Insurance Rate Maps, Flood Boundary-Floodway Maps, County Soils Survey Maps or other existing County Floodplain Zoning Maps shall be used to delineate floodplain areas.

(b) *Determinations of navigability and high-water mark.* Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate district office of the department for

a final determination of navigability or ordinary high-water mark.

- (c) *Resolution of discrepancies.* When an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate district office of the department to determine if the Shoreland-Wetland District boundary as mapped is in error. If department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in subsections (d) and (e) of this section, the zoning administrator shall be responsible for initiating a map amendment within a reasonable period.
- (d) *Filled wetlands.* Wetlands filled prior to October 10, 1990, the date on which the city received final Wetland Inventory Maps, in a manner that affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this chapter.
- (e) *Wetlands landward of a bulkhead line.* Wetlands located between the original ordinary high-water mark and a bulkhead line established prior to May 7, 1982, under Wis. Stats. § 30.11 are not subject to this chapter.
- (f) Pursuant to Wis. Stats. §§ 61.353(7) or 62.233, the Shoreland Zoning District does not include lands adjacent to an artificially constructed drainage ditch, pond or retention basin if the drainage ditch, pond or retention basin is not hydrologically connected to a natural navigable water body.

(Ord. No. 719, 6-17-14)

Sec. 78-128. - Permitted uses, setbacks, vegetative buffer zones.

The following uses are permitted subject to the provisions of Wis. Stats. chs. 30 and 31, and the provisions of other local, state and federal laws, if applicable:

- (1) Activities and uses that do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
  - a. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
  - b. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
  - c. The practice of silviculture, including the planting, thinning and harvesting of timber;
  - d. The pasturing of livestock;
  - e. The cultivation of agricultural crops; and
  - f. The construction and maintenance of duck blinds.

- (2) Uses that do not require the issuance of a permit or plan approval and that may involve wetland alterations only to the extent specifically provided below:
- a. The practice of silviculture, including limited temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
  - b. The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
  - c. The maintenance and repair of existing drainage systems to restore preexisting levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible;
  - d. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
  - e. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance;
  - f. The installation and maintenance of sealed tiles for the purpose of draining lands outside the Shoreland-Wetland Zoning District; provided that, such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in subsection 78-96(3); and
  - g. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (3) Uses that are allowed upon the issuance of a conditional use permit and that may include wetland alterations only to the extent specifically provided below:
- a. The construction and maintenance of roads necessary for the continuity of the city street system, the provision of essential utility and emergency services, or to provide access to uses permitted under this section, provided that:
    1. The road cannot, as a practical matter, be located outside the wetland;
    2. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in section 78-96;
    3. The road is designed and constructed with the minimum cross sectional area practical to serve the intended use;
    4. Road construction activities are carried out in the immediate area of the roadbed only;and

5. Any wetland alteration must be necessary for the construction or maintenance of the road.
- b. The construction and maintenance of nonresidential buildings, provided that:
    1. The building is used solely in conjunction with a use permitted in the Shoreland-Wetland District or for the raising of waterfowl, minnows or other wetland or aquatic animals;
    2. The building cannot, as a practical matter, be located outside the wetland;
    3. The building does not exceed 500 square feet in floor area; and
    4. Only limited filling and excavating necessary to provide structural support for the building is allowed.
  - c. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
    1. Any private development allowed under this subsection shall be used exclusively for the permitted purpose;
    2. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;
    3. The construction and maintenance of roads necessary for the uses permitted under this subsection are allowed only where such construction and maintenance meets the criteria in subsection (3)a. of this section; and
    4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
  - d. The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines, provided that:
    1. The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
    2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and
    3. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in section 78-96.

(4) *Setbacks from the water.*

a. *Principle building setbacks.*

1. All principle buildings shall be setback at least 50 feet from the ordinary high-water mark.
2. Adjustment of shore yards. A setback less than that required by subsection (4)a.1. may be allowed if all of the following apply:
  - (i) The principle building is constructed or placed on a lot or a parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principle building; and
  - (ii) The principle building is constructed or placed within a distance equal to the average setback of the principle building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

b. *Accessory structures.*

1. Accessory buildings accessory to permitted and conditional uses may be located within a shoreyard, but:
  - (i) Shall not be closer to 35 feet to the average annual high-water mark; shall not exceed one accessory building per shoreyard lot; shall be limited in size to 250 square feet or less in area; shall be at least ten feet from the principle structure; shall be at least eight feet from any side lot line and shall be not greater than 20 feet in height.

(5) *Vegetative buffer zone.*

- a. Pursuant to Wis. Stats. §§ 61.353(3) or 62.233, a landowner must maintain a vegetative buffer zone as follows:
  1. A person who owns shoreland property that contains vegetation must maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in subsection (5)a.2.
  2. If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone the owner shall establish a vegetative buffer zone with new vegetation.
  3. A person who is required to maintain or establish a vegetative buffer zone under subsection (5)a.1., may remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage and extends no more than 35 feet inland from the ordinary high-water mark.

(Ord. No. 719, 6-17-14)

Sec. 78-129. - Prohibited uses.

- (a) Any use not listed in section 78-128 is prohibited unless the wetland or a portion of the wetland has been rezoned by amendment of this chapter in accordance with section 78-96.
- (b) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

(Ord. No. 719, 6-17-14)

Secs. 78-130—78-160. - Reserved.

#### ARTICLE IV. - NONCONFORMING STRUCTURES AND USES

Sec. 78-161. - Regulated.

- (a) The lawful use of a building, structure or property that existed at the time the ordinance from which this chapter is derived, or an applicable amendment to this chapter, took effect and is not in conformity with the provisions of this chapter, including the routine maintenance of such a building or structure, may be continued, subject to the conditions of this section.
- (b) The shoreland-wetland provisions of this chapter authorized by Wis. Stats. § 62.231, shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of the shoreland-wetland provisions, or of any environmental control facility in existence on May 7, 1982, related to such a structure. All other modifications to nonconforming structures are subject to Wis. Stats. § 62.23(7)(h), which limits total lifetime structural repairs and alterations to 50 percent of current fair market value.
- (c) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to this chapter.
- (d) Any legal nonconforming use of property that does not involve the use of a structure and that existed at the time of the adoption or subsequent amendment of the ordinance from which this chapter is derived adopted under Wis. Stats. §§ 61.351 or 62.231, may be continued although such use does not conform with the provisions of this chapter. However, such nonconforming use may not be extended.
- (e) The maintenance and repair of nonconforming boathouses located below the ordinary high-water mark of any navigable waters shall comply with the requirements of Wis. Stats. § 30.121.
- (f)

Uses that are nuisances under common law shall not be permitted to continue as nonconforming uses.

(Ord. No. 719, 6-17-14)

Secs. 78-162—78-185. - Reserved.