

WETLAND ZONING

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July 24, 1994

Chapter 29 - 3

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29.00 STATUTORY AUTHORIZATION, FINDINGS OF FACT, STATEMENT OF PURPOSE AND TITLE. (1) Statutory Authorization. This ordinance is adopted pursuant to the authorization in Wis. Stat. s. 62.23. The shoreland-wetland provisions are adopted pursuant to Wis. Stat. s. 62.231 to implement Wis. Stat. ss. 87.30 and 144.26.

(2) **Findings 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 Legislature of Wisconsin has delegated responsibility to all municipalities to:

- (a) Promote the public health, safety, convenience and general welfare;
- (b) Maintain the storm and flood water storage capacity of wetlands;
- (c) 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;
- (d) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
- (e) Prohibit certain uses detrimental to the shoreland-wetland area; and
- (f) 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.

In addition to the reasons above, the City desires to preserve and protect wetlands in Middleton identified on the Wisconsin Wetland Inventory Map (dated July 11, 1991), for the protection of water quality and aquatic life and wildlife.

29.02 GENERAL PROVISIONS. (1) Compliance. The use of wetlands and the alteration of wetlands within the City shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations (however, see s. 29.04 of this ordinance for the standards applicable to nonconforming uses). All permitted development shall require the issuance of a permit unless otherwise expressly excluded by a provision of this ordinance.

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(2) **Municipalities and State Agencies Regulated.** Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Wis. Stat. s. 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Wis. Stat. s. 30.12(4)(a) applies.

(3) **Abrogation and Greater Restrictions.** (a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under Wis. Stat. ss. 61.35, 62.23, or 87.30, which relate to shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance will prevail.

(4) **Interpretation.** In their interpretation and application, the provisions of this ordinance 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 the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Wisconsin Administrative Code NR 117, and where the ordinance provision is unclear, the provision shall be interpreted in light of the Chapter NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(5) **Severability.** Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(6) **Annexed Areas.** The Dane County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the City for all areas annexed by the City after May 7, 1982. These annexed lands are described on the City's official zoning map. The Dane County Shoreland zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the Office of the City Zoning Administrator.

29.03 WETLAND ZONING DISTRICT. (1) Wetland Zoning Maps. The following

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maps are hereby adopted and made part of this ordinance and are on file in the office of the City Zoning Administrator:

(a) Wisconsin Wetland Inventory Maps stamped "Final" Revised on July 11, 1991.

(b) The boundaries of floodway districts, including the floodway, flood fringe, flood storage, and other floodplain districts, are those areas designated as floodplains or A Zones on Flood Insurance Study Maps which have been approved by the Department of Natural Resources and the Federal Emergency Management Agency (FEMA), dated May 1, 1980, and the Warzyn/EWI Floodplain Study Map, dated June 3, 1989, which are on file in the office of the City Engineer.

(c) City Zoning Map.

(2) District Boundaries. (a) The wetland zoning district includes all wetlands in the City which are shown on the final Wetland Inventory Map that has been adopted and made a part of this ordinance.

(b) Determination 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 of Natural Resources (hereinafter referred to as "the department") for a final determination of navigability or ordinary high water mark.

(c) When an apparent discrepancy exists between the wetland district boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the zoning administrator shall, after concurrence by the Plan Commission, contact the appropriate district office of the Department to determine if the 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), below, the zoning administrator shall be responsible for initiating a map amendment within sixty (60) days.

(d) Filled Wetlands. Wetlands which were filled prior to July, 1991, the date on which the City received final wetland inventory maps, in a manner which affects their wetland characteristics to the extent that the area can no longer be

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defined as wetland, are not subject to this ordinance.

(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. Stat. s. 30.11, are not subject to this ordinance.

(3) **Permitted Uses.** The following uses are permitted subject to the provisions of Wis. Stat. Chapters 30 and 31, and the provisions of other local, state and federal laws, if applicable:

(a) **Activities and uses which do not require the issuance of an occupancy permit, provided that no wetland alteration occurs:**

1. **Hiking, fishing, swimming and boating;**
2. **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;**
3. **The practice of silviculture, including the planting, thinning and harvesting of timber; and**
4. **The construction and maintenance of nature blinds.**

(b) **Uses which do not require the issuance of an occupancy permit and which may involve wetland alterations only to the extent specifically provided below:**

1. **The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silviculture activities if not corrected;**
2. **The maintenance and repair of existing drainage systems to restore pre-existing 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;**
3. **The installation and maintenance of sealed tiles for the purpose of draining lands outside the wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize the adverse impacts upon the natural functions of the shoreland-wetland listed in section 29.06(3) of this ordinance; and**

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4. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(c) Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided below:

1. The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under section 29.03(3) of this ordinance, provided that:

(i) The road cannot, as a practical matter, be located outside the wetland;

(ii) The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland as listed in s. 29.06(13) hereof;

(iii) The road is designed and constructed with the minimum cross sectional area practical to serve the intended use;

(iv) Road construction activities are carried out in the immediate area of the roadbed only;

(v) Any wetland alteration must be necessary for the construction or maintenance of the road.

2. The construction and maintenance of nonresidential buildings provided that:

(i) 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;

(ii) The building cannot, as a practical matter, be located outside the wetland;

(iii) The building does not exceed 500 square feet in floor area; and

(iv) Only limited filling and excavating necessary to provide structural

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support for the building is allowed.

3. 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:

(i) Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;

(ii) 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;

(iii) The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in section 29.03(c)1 of this ordinance; and

(iv) 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.

4. 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:

(i) The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;

(ii) Only limited filling or excavating necessary for such construction or maintenance is allowed; and

(iii) Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in section 29.06(3) of this ordinance.

5. 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;

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6. Trapping; snowmobiling; and cultivation of agricultural crops.

(4) **Prohibited Uses.** (a) Any use not listed in section 29.03(3) of this ordinance is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 29.06 of this ordinance.

(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.

29.04 NONCONFORMING STRUCTURES AND USES. The lawful use of a building, structure or property which existed at the time this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of the ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

(1) The shoreland-wetland provisions of this ordinance authorized by Wis. Stat. s. 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. Stat. s. 62.23(7)(h), which limits total lifetime structural repairs and alterations to 50% of current fair market value.

(2) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this ordinance.

(3) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance adopted under Wis. Stat. ss. 61.351 or 62.231 may be continued although such use does not conform with the provisions of the ordinance. However, such nonconforming use may not be extended.

(4) The maintenance and repair of nonconforming boathouses which are located below the ordinary high water mark of any navigable waters shall comply with the requirements of Wis. Stat. s. 30.121.

(5) Uses which are nuisances under common law shall not be permitted to

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continue as nonconforming uses.

29.05 ADMINISTRATIVE PROVISIONS. (1) Zoning Administrator. The City Zoning Administrator is appointed for the purpose of administering and enforcing this ordinance. The zoning administrator shall have the following duties and powers:

(a) Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.

(b) Issue permits and certificates of occupancy and inspect properties for compliance with this ordinance.

(c) Keep records of all permits issued, inspections made, work approved and other official actions.

(d) Have access to any structure or premises between the hours of 8:00 AM and 6:00 PM for the purpose of performing these duties.

(e) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within ten (10) days after they are granted or denied, to the appropriate district office of the Department.

(f) Investigate and report violations of this ordinance to the appropriate legal counsel for the City.

(2) Zoning Permits. (a) When Required. Unless another section of this ordinance specifically exempts certain types of development from this requirement, an occupancy permit shall be obtained from the zoning administrator before any new development, as defined in section 29.08(6) of

this ordinance, or any change in the use of an existing building or structure is initiated.

(b) Application. An application for an occupancy permit shall be made to the zoning administrator upon forms furnished by the City and shall include, for the purpose of proper enforcement of these regulations, the following information:

1. General Information.

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(i) Name, address, and telephone number of the applicant, property owner and contractor, where available.

(ii) Legal description of the property and a general description of the proposed use or development.

(iii) 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:

(i) Dimensions and area of the lot;

(ii) Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;

(iii) Description of any existing or proposed on-site sewage systems or private water supply systems;

(iv) Location of the ordinary high water mark of any abutting navigable waterways;

(v) Boundaries of all wetlands;

(vi) Existing and proposed topographic and drainage features and vegetative cover;

(vii) Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;

(viii) Location of existing or future access roads;

(ix) Specifications and dimensions for areas of proposed wetland alteration; and

(x) Building elevations.

(c) Expiration. All permits issued under the authority of this ordinance

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shall expire 12 months from the date of issuance.

(3) Occupancy Permit. (a) Except where no zoning permit or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of occupancy is issued by the zoning administrator subject to the following provisions:

1. The certificate of occupancy shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.

2. Application for such certificate shall be concurrent with the application for a conditional use permit or any other applicable permit that may be required.

3. The certificate of occupancy shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this ordinance.

(b) The zoning administrator may issue a temporary certificate of occupancy for a building, premises or part thereof pursuant to rules and regulations established by the Common Council.

(c) Upon written request from the owner, the zoning administrator shall issue a certificate of occupancy for any building or premises existing at the time of ordinance adoption, 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 ordinance.

(4) Conditional Use Permits. (a) Application. Any use listed as a conditional use in this ordinance 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 s. 29.05(8) hereof.

(b) Conditions. Upon consideration of the permit application and the standards applicable to the conditional uses designated in s. 29.03(3) of this ordinance, the Plan Commission shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance as listed in section 29.01(2). Such conditions may include specifications for, without limitation because of

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enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water quality facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Plan Commission may require the applicant to furnish, in addition to the information required for a zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this ordinance.

(5) **Fees.** The Common Council shall, by resolution, adopt fees for the following:

(a) Certificates of Occupancy.

(b) Public Hearings.

(c) Legal Notice Publications.

(d) Conditional Use Permits.

(e) Rezoning Petitions.

(6) **Recording.** Where an occupancy permit or conditional use permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.

(7) **Revocation.** Where the conditions of an occupancy permit or conditional use permit are violated, the permit shall be revoked by the zoning administrator.

(8) **Wetland Board of Appeals.** (a) For the purposes of this ordinance the Mayor shall appoint a Wetland Board of Appeals consisting of five members subject to confirmation by the Common Council. The structure of this Board shall be: one member each from the Plan Commission, Public Works Committee, Water Resources Management Commission, and Park, Recreation and Forestry Commission, and one citizen member. The terms of their appointment shall be as set forth in Wis. Stat. s. 62.23(7)(e)3. The Wetland Board of Appeals shall adopt rules for the conduct of its business as required by Wis. Stat. s. 62.23(7)(e)3.

(b) **Powers and Duties.** The Wetland Board of Appeals:

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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 ordinance.

2. Shall hear and decide applications for conditional use permits.

3. May authorize upon appeal a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates:

(i) That literal enforcement of the terms of the ordinance will result in unnecessary hardship for the applicant.

(ii) 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;

(iii) That such variance is not contrary to the public interest as expressed by the purpose of this ordinance; and

(iv) That such variance will not grant or increase any use of property which is prohibited in the zoning district.

(c) Appeals to the Board. Appeals to the Wetland Board of Appeals may be taken by any person aggrieved by an officer, department or committee/commission 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 shall transmit to the Board all the papers constituting the record on the matter appealed.

(d) Public Hearings.

1. Before making a decision on an appeal or application, the Wetland Board of Appeals or the Plan Commission 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. Stat. Chapter 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.

2. A copy of such notice shall be mailed to the parties in interest at least 10 days prior to all public hearings on issues involving wetland zoning. A copy shall also be sent to the Southern District Headquarters of the Department at

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least 10 days prior to all public hearings on issues involving shoreland-wetland zoning.

(e) Decisions.

1. The final disposition of an appeal or application for a conditional use permit before the Wetland Board of Appeals or the Plan Commission shall be in the form of a written decision, made within 15 days after the public hearing and signed by the Board Chairperson. Such decision shall state the specific facts which 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.

2. A copy of such decision shall be mailed to the parties in interest and the South District Headquarters of the Department within 10 days after the decision is issued if the decision involves a shoreland-wetland area.

29.06 AMENDING WETLAND ZONING REGULATIONS. The Common Council may alter, supplement or change the district boundaries and the regulations contained in this ordinance in accordance with the requirements of Wis. Stat. s. 62.23(7)(d)2 and Wisconsin Administrative Code Chapter NR 117, and the following:

(1) A copy of each proposed text or map amendment shall be submitted to the Southern District Headquarters of the Department within 5 days of the submission of the proposed amendment to the City Plan Commission if the amendment would apply to a zoned shoreland-wetland area;

(2) All proposed text and map amendments to the wetland zoning regulations shall be referred to the City Plan Commission, and a public hearing shall be held after Class 2 notice as required by Wis. Stat. s. 62.23(7)(d)2. The Southern District Headquarters of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing if the proposed amendment is applicable to land within the shoreland-wetland zone.

(3) In order to insure that this ordinance will remain consistent with the shoreland protection objectives of Wis. Stat. s. 144.26, and to protect the wetlands identified on the State Wetlands Inventory Map (dated July 11, 1991), the Common Council may not rezone a wetland in a shoreland-wetland zoning district, or any wetland on the State Wetlands Inventory Map (dated July 11, 1991), or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:

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- 1. Storm and flood water storage capacity;**
- 2. Maintenance of any 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;**
- 3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;**
- 4. Shoreline protection against erosion;**
- 5. Fish spawning, breeding, nursery or feeding grounds;**
- 6. Wildlife habitat; or**
- 7. 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 of a shoreland-wetland area may have a significant adverse impact upon any of the criteria listed in subsection (c), the Department shall so notify the City of its determination either prior to or during the public hearing held on the proposed amendment.

(5) For all text and map amendments relating to zoned shoreland-wetland areas, the Southern District Headquarters of the Department shall be provided with:

(a) A copy of the recommendation and report, if any, of the City Plan Commission on a proposed text or map amendment, within 10 days after the submission of those recommendations to the Middleton Common Council.

(b) Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.

(6) If the Department notifies the City Plan Commission in writing that a proposed amendment to the shoreland-wetland regulations may have a significant adverse impact upon any of the criteria listed in s. 29.06(3), that proposed amendment, if approved by the Common Council, shall not become effective until more than 30 days have elapsed since written notice of the City approval was mailed to the Department, as required by s. 29.06(5)(b). If within the 30 day period, the Department notifies the City that the Department intends to

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adopt superseding shoreland-wetland zoning ordinance for the municipality as provided for by Wis. Stat. s. 62.231(6), the proposed amendment shall not become effective until the ordinance adoption procedure under Wis. Stat. s. 62.231(6) is completed or otherwise terminated.

29.07 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 ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The zoning administrator shall refer violations to the City Attorney who shall prosecute such violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture as set forth in s. 30.04 of this Code, per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance 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. Stat. s. 87.30(2).

29.08 DEFINITIONS. For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified, shall be measured horizontally. The following terms have the meanings set forth beside them:

(1) "Accessory Structure or Use" means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

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

(3) "Class 2 Public Notice" means publication of a public hearing notice under Wis. Stat. Chapter 985, in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days

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prior to the hearing.

(4) "Conditional Use" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Wetland Board of Appeals or, where appropriate, the Plan Commission.

(5) "Department" means the Wisconsin Department of Natural Resources.

(6) "Development" means any human made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.

(7) "Drainage System" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

(8) "Environmental Control Facility" means any facility, temporary or permanent, which is 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 which are to be supplemented or replaced by other pollution control facilities.

(9) "Fixed Houseboat" as defined in Wis. Stat. s. 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.

(10) "Navigable Waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under Wis. Stat. s. 144.26(2)(d), notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Wis. Stat. ss. 61.351 or 62.221 and Wisconsin Administrative Code Chapter NR 117, do not apply to lands adjacent to farm drainage ditches if:

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

Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels of flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is 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."

(11) "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.

(12) "Planning Agency" means the City Plan Commission created under Wis. Stat. s. 62.23(1), which acts on matters pertaining to planning and zoning.

(13) "Shorelands" means lands 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.

(14) "Shoreland-wetland District" means the zoning district, created in this wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance.

(15) "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

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this ordinance.

(16) "Variance" means an authorization granted by the Wetland Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.

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

(18) "Wetland Alteration" means any filling, flooding, draining, dredging, ditching, tiling, excavation, temporary water level stabilization measures or dike and dam construction in a wetland area.