

TITLE II - COMMUNITY PROTECTION**DIVISION 3 - BUILDING AND PROPERTY REGULATIONS****CHAPTER 1
FLOOD PLAIN REGULATIONS****231-1 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE.**

1. Statutory Authorization. The Legislature of the State of Iowa has in Chapter 414, Code of Iowa, delegated the responsibility to cities to enact zoning regulations to secure safety from flood and to promote health and the general welfare.

2. Findings of Fact.

A. The flood hazard areas of the City of Estherville, Iowa, are subject to periodic inundation which can result in loss of life and property and health; and, safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the health, safety, and general welfare of the community.

B. These losses, hazards, and related adverse effects are caused by (i) the occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flood and (ii) the cumulative effect of flood plain construction on flood flows, which causes increases in flood heights and flood water velocities.

C. This ordinance relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources.

3. Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing those flood losses described in Section 231-2 with provisions designed to:

- A. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
- B. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or which cause excessive increases in flood heights or velocities.
- C. Require that uses vulnerable to floods, including public utilities which serve such uses, be protected against flood damage at the time of initial construction.
- D. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- E. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

231-2 GENERAL PROVISIONS.

1. Lands to Which Ordinance Applies. This ordinance shall apply to all lands within the jurisdiction of the City of Estherville, Iowa, shown on the Official Flood Plain Zoning Map as being within the boundaries of the Floodway, Floodway Fringe, General Flood Plain, and Shallow Flooding Districts.
2. Establishment of Official Flood Plain Zoning Map. The Flood Boundary and Floodway Map(s) prepared as part of the Flood Insurance Study for the City of Estherville, dated October 14, 1977, are hereby adopted by reference and declared to be the Official Flood Plain Zoning Map. The flood profiles and all explanatory material contained with the Flood Insurance Study and the Flood Insurance Rate Map(s) are also declared to be a part of this ordinance.

3. Rules for Interpretation of District Boundaries. The boundaries of the zoning district shall be determined by scaling distances on the Official Flood Plain Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, the zoning administrative officer shall make the necessary interpretation. The person contesting the location of the district boundary shall be given a reasonable opportunity to present their case and submit technical evidence.
4. Compliance. No structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations which apply to uses within the jurisdiction of this ordinance.
5. Abrogation and Greater Restrictions. It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
6. 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 governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.
7. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the flood

plain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Estherville or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

231-3 ESTABLISHMENT OF ZONING DISTRICTS. The flood plain areas within the jurisdiction of this ordinance are hereby divided into the following districts:

1. Floodway (Overlay) District. The Floodway District shall be consistent with the boundaries of the floodway as shown on the Official Flood Plain Zoning Map.
2. Floodway Fringe (Overlay) District. The Floodway Fringe District shall be those areas shown as floodway fringe on the Official Flood Plain Zoning Map.
3. General Flood Plain (Overlay) District. The General Flood Plain District shall be those areas shown on the Official Flood Plain Zoning Map as being within the approximate 100-year flood boundary.
4. Shallow Flooding (Overlay) District. The Shallow Flooding District shall be those areas shown on the Official Flood Plain Zoning Map as being within the 100-year flood boundary and identified on the Flood Insurance Rate Map as (AO and AH) Zone(s). Within these districts all uses not allowed as Permitted Uses or permissible as Conditional Uses are prohibited unless a variance to the term of this ordinance is granted after due consideration by the Board of Adjustment.

213-4 FLOODWAY (OVERLAY) DISTRICT (FW).

1. Permitted Uses. The following uses shall be permitted within the Floodway District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstruction, the storage of materials or equipment, excavation, or alteration of a water-course.

- A. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
 - B. Industrial-commercial uses such as loading areas, parking areas, airport landing strips.
 - C. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horse-back riding trails.
 - D. Residential uses such as lawns, gardens, parking areas, and play areas.
 - E. Such other open-space uses similar in nature to the above uses.
2. Conditional Uses. The following uses which involve structures (temporary or permanent), fill, storage of materials or equipment may be permitted only upon issuance of a Conditional Use Permit by the Board of Adjustment as provided for in Section 231-8(3). Such uses must also meet the applicable provisions of the Floodway District Performance Standards.
- A. Uses or structures accessory to open-space uses.
 - B. Circuses, carnivals, and similar transient amusement enterprises.
 - C. Drive-in theaters, new and used car lots, roadside stands, signs, and billboards.
 - D. Extraction of sands, gravel, and other materials.
 - E. Marinas, boat rentals, docks, piers, wharves.
 - F. Utility transmission lines, underground pipelines.

G. Other uses similar in nature to uses described in Section 231-4(1) or 231-4(2) which are consistent with the provisions of Sections 231-4(3) and the general spirit and purpose of this ordinance.

3. Performance Standards. All Floodway District uses allowed as a Permitted or Conditional Use shall meet the following standards.

A. No use shall be permitted in the Floodway District that would result in any increase in the 100-year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

B. All uses within the Floodway District shall:

- (1) Be consistent with the need to minimize flood damage.
- (2) Use construction methods and practices that will minimize flood damage.
- (3) Use construction materials and utility equipment that are resistant to flood damage.

C. No use shall affect the capacity or conveyance of the channel or floodway or any tributary to the main stream, drainage ditch, or any other drainage facility or system.

D. Structures, buildings, and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.

E. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.

F. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal, or plant life is prohibited. Storage of other material may

be allowed if readily removable from the Floodway District within the time available after flood warning.

G. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.

H. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.

I. Pipeline river or stream crossings shall be buried in the stream bed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

213-5 FLOODWAY FRINGE (OVERLAY) DISTRICT (FF).

1. Permitted Uses. All uses within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway Fringe District.

2. Performance Standards. All uses must be consistent with the need to minimize flood damage and shall meet the following applicable performance standards.

A. All structures shall (i) be adequately anchored to prevent flotation, collapse or lateral movement of the structure, (ii) be constructed with materials and utility equipment resistant to flood damage, and (iii) be constructed by methods and practices that minimize flood damage.

B. Residential buildings. All new or substantially improved residential structures shall have the lowest floor, including basements, elevated a minimum of one (1) foot

above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than one (1) foot above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed, subject to favorable consideration by the Board of Adjustment and issuance of a Conditional Use Permit, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstanding the various forces and hazards associated with flooding. All new residential buildings shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.

C. Nonresidential buildings. All new and substantially improved nonresidential buildings shall have the first floor (including basement) elevated a minimum of one (1) foot above the 100-year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the 100-year flood; and that the structure, below the 100-year flood level, is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to National Geodetic Vertical Datum) to which any structures are floodproofed shall be maintained by the zoning administrator.

D. All new and substantially improved structures:

(1) Fully enclosed areas below the “lowest floor” (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than one foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(2) New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(3) New and substantially improved structures must be 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.

E. Factory-built homes:

(1) Factory-built homes including those placed in existing factory-built home parks or subdivisions shall be anchored to resist flotation, collapse, or lateral movement.

(2) Factory-built homes including those placed in existing factory-built home parks or subdivisions shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.

F. Utility and Sanitary Systems.

(1) All new and replacement sanitary sewage systems shall be designed to minimize and eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities shall be provided with a level of flood protection equal to or greater than one (1) foot above the 100-year flood elevation.

(2) On site waste disposal systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

(3) New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities shall be provided with a level of protection equal to or greater than one (1) foot above the 100-year flood elevation.

(4) Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

G. Storage of materials and equipment that are flammable, explosive, or injurious to human, animal, or plant life is prohibited unless elevated a minimum of one (1) foot above the 100-year flood level. Other material and equipment must either be similarly elevated or (i) not be subject to major flood damage and be anchored to prevent movement due to flood waters or (ii) be readily removable from the area within the time available after flood warning.

H. Flood control structural works such as levees, flood walls, etc., shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 ft. of design free-board and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.

I. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch, or other drainage facility or system.

J. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals shall meet the applicable performance standards. Subdivision proposals intended for residential development shall provide all lots with a means of vehicular access that will remain dry during occurrence of the 100-year flood.

K. The exemption of detached garages, sheds, and similar structures from the 100-year flood elevation requirements may result in increased premium rates for insurance coverage of the structure and contents, however, said detached garages, sheds, and similar accessory type structures are exempt from the 100-year flood elevation requirements when:

- (1) The structure shall not be used for human habitation.
- (2) The structure shall be designed to have low flood damage potential.
- (3) The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- (4) Structures shall be firmly anchored to prevent flotation which may result in damage to other structures.

(5) The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one (1) foot above the 100-year flood level.

231-6 GENERAL FLOOD PLAIN (OVERLAY) DISTRICT (FP).

1. Permitted Uses. The following uses shall be permitted within the General Flood Plain District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstruction; the storage of materials or equipment; excavation; or alteration of a watercourse.

A. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

B. Industrial-commercial uses such as loading areas, parking areas, airport landing strips.

C. Private and public recreation uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

D. Residential uses such as lawns, gardens, parking areas, and play areas.

2. Conditional Uses. Any uses which involves placement of structures, factory-built homes, fill or other obstructions; the storage of materials or equipment; excavation; or alteration of a watercourse may be allowed only upon issuance of a Conditional Use

Permit by the Board of Adjustment as provided for in Section 231-8(3). All such uses shall be reviewed by the Department of Natural Resources to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the 100-year flood level. The applicant shall be responsible for providing the Department of Natural Resources with sufficient technical information to make the determination.

3. Performance Standards.

A. All conditional uses, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District (Section 231-4).

B. All conditional uses, or portions thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the applicable standards of the Floodway Fringe (Overlay) District (Section 231-5).

231-7 SHALLOW FLOODING (OVERLAY) DISTRICT (SF).

1. Permitted Uses. All uses within the Shallow Flooding District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet the applicable performance standards of the Shallow Flooding District.

2. Performance Standards. The performance standards for the Shallow Flooding District shall be the same as the performance standards for the Floodway Fringe District with the following exceptions:

A. In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to

the number of feet as specified on the Rate Map above the crown of the nearest street.

B. In shallow flooding areas designated as an AH Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the elevation as specified on the Rate Map.

231-8 ADMINISTRATION.

1. Appointment, Duties, and Responsibilities of Zoning Administrator.

A. A zoning administrator designated by the Estherville City Council shall administer and enforce this ordinance and will herein be referred to as the administrator.

B. Duties and responsibilities of the administrator shall include, but not necessarily be limited to, the following:

(1) Review all flood plain development permit applications to insure that the provisions of this ordinance will be satisfied.

(2) Review all flood plain development permit applications to insure that all necessary permits have been obtained from federal, state, or local governmental agencies.

(3) Record and maintain a record of (i) the elevation (in relation to National Geodetic Vertical Datum) of the lowest floor of all new or substantially improved buildings or (ii) the elevation to which new or substantially improved structures have been floodproofed.

(4) Notify adjacent communities and/or counties and the Department of Natural Resources prior to any proposed alteration or relocation of a

watercourse and submit evidence of such notifications to the Federal Insurance Administrator.

(5) Keep a record of all permits, appeals, variances, and such other transactions and correspondence pertaining to the administration of this ordinance.

(6) Submit to the Federal Insurance Administrator an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.

(7) Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.

(8) Review subdivision proposal to insure such proposals are consistent with the purpose of this ordinance and advise the City Council of potential conflicts.

2. Flood Plain Development Permit.

A. Permit Required. A Flood Plain Development Permit issued by the administrator shall be secured prior to initiation of any flood plain development (any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation, or drilling operations) including the placement of factory-built homes.

B. Application for Permit. Application for a Flood Plain Development Permit shall be made on forms supplied by the administrator and shall include the following information.

(1) Description of the work to be covered by the permit for which application is to be made.

- (2) Description of the land on which the proposed work is to be done (i.e., lot, block, tract, street address, or similar description) that will readily identify and locate the work to be done.
- (3) Identification of the use or occupancy for which the proposed work is intended.
- (4) Elevation of the 100-year flood.
- (5) Elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of buildings or of the level to which a building is to be flood-proofed.
- (6) For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
- (7) Such other information as the administrator deems reasonably necessary for the purpose of this ordinance.

C. Action for Permit Application. The administrator shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable provisions and standards of this ordinance and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore. The administrator shall not issue permits for Conditional Uses or Variances except as directed by the Board of Adjustment.

D. Construction and Use to be as Provided in Application and Plans. Flood Plain Development Permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a

violation of this ordinance and shall be punishable as provided in Section 2.3-1.10. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this ordinance, prior to the use or occupancy of any structure.

3. Conditional Uses, Appeals, and Variances.

A. Appointment and Duties of Board of Adjustment. A Board of Adjustment is hereby established which shall hear and decide (i) applications for Conditional Uses upon which the board is authorized to pass under this ordinance; (ii) Appeals, and (iii) requests for Variances to the provisions of this ordinance; and shall take any other action which is required of the board.

B. Conditional Uses. Requests for Conditional Uses shall be submitted to the administrator, who shall forward such to the Board of Adjustment for consideration. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary to the Board of Adjustment.

C. Appeals. Where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom the appeal is taken shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

D. Variances. The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this ordinance that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards.

- (1) No variance shall be granted for any development within the Floodway District which would result in any increase in the 100-year level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- (2) Variances shall only be granted 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 the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense; create nuisances, or cause fraud on or victimization of the public.
- (3) Variance shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard to afford relief.
- (4) In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this ordinance, the applicant shall be notified in writing over the signature of the zoning administrator that (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage and (ii) such construction increases risks to life and property.

(5) All variances granted shall have the concurrence or approval of the Department of Natural Resources.

E. Hearings and Decisions of the Board of Adjustment.

(1) Hearings. Upon the filing with the Board of Adjustment of an appeal, an application for a Conditional Use or a request for a Variance, the board shall hold a public hearing. The board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.

(2) Decisions. The board shall arrive at a decision on an Appeal, Conditional Use, or Variance within a reasonable time. In passing upon an appeal, the board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a Conditional Use or Variance, the board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as contained in Section 2.3-1.08 3.E.2.b.

(a) Factors Upon Which the Decision of the Board Shall be Based. In passing upon applications for Conditional Uses or requests for Variances, the board shall consider all relevant factors specified in other sections of this ordinance and:

- 1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- 2) The danger that materials may be swept on to other lands or downstream to the injury of others.
- 3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- 4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- 5) The importance of the services provided by the proposed facility to the community.
- 6) The requirements of the facility for a flood plain location.
- 7) The availability of alternative locations not subject to flooding for the proposed use.
- 8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- 9) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- 10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- 11) The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
- 12) Such other factors which are relevant to the purpose of this ordinance.

(b) Conditions attached to Conditional Uses or Variances. Upon consideration of the factors listed above, the board may attach such conditions to the granting of Conditional Uses or Variances as it deems necessary to further the purpose of this ordinance. Such conditions may include, but not necessarily be limited to:

- 1) Modification of waste disposal and water supply facilities.
- 2) Limitation on periods of use and operation.
- 3) Imposition of operational controls, sureties, and deed restrictions.
- 4) Requirements for construction of channel modification, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purposes of this ordinance.
- 5) Floodproofing measures. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

F. Appeals to the Court. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

231-9 NONCONFORMING USES. A structure or the use of a structure on land which was lawful before the passage or amendment of the ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

1. No structural alteration, addition, or repair to any nonconforming structure over the life of the structure shall exceed 50 percent of its value at the time of its becoming a nonconforming use, unless the structure is permanently changed to a conforming use.
2. If such is discontinued for three (3) consecutive months, any future use of the building premises shall conform to this ordinance. The assessor shall notify the zoning administrator in writing of instances of nonconforming uses which have been discontinued for three (3) months.
3. If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its value prior to destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
4. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.
5. Except as provided in Section 231-9 (4) any use which has been permitted as a Conditional Use or Variance shall be considered a conforming use.

231-10 PENALTIES FOR VIOLATION. Violations 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 Conditional Uses or Variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one hundred dollars (\$100) or imprisoned for not more than 30 days. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Estherville from taking such other lawful action as is necessary to prevent or remedy any violation.

231-11 AMENDMENTS. The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed as provided in Sections 414.4, 414.5, and 414.21, Code of Iowa, 1999. No amendment, supplement, change, or modification to this ordinance shall be undertaken without prior approval from the Department of Natural Resources.

231-12 DEFINITIONS. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. "Basement": any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see "lowest floor."
2. "Development": any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.
3. "Factory-Built Home": any structure, designed for residential use, which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this ordinance factory-built homes include mobile homes, manufactured homes, and modular homes, and also include park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.
4. "Factory-Built Home Park": a parcel or contiguous parcels of land divided into two or more factory-built home lots for rent or sale.
5. "Flood": a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

6. "Flood Elevation": the elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of floodwaters related to the occurrence of the 100-year flood.
7. "Flood Insurance Rate Map": the official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.
8. "Flood Insurance Study": a study initiated, funded, and published by the Federal Insurance Administration for the purpose of evaluating in detail the existence and severity of flood hazards; providing the city with the necessary information for adopting a flood plain management program; and establishing actuarial flood insurance rates.
9. "Flood Plain": any land area susceptible to being inundated by water as a result of a flood.
10. "Flood Plain Management": an overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency preparedness plans, flood control works, floodproofing, and flood plain management regulations.
11. "Floodproofing": any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.
12. "Floodway": the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not result in substantially higher flood levels and flow velocities.

13. "Floodway Fringe": those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

14. "Lowest Floor": the floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

A. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section 231-5(2) (D) (1) and

B. The enclosed area is unfinished (not carpeted, dry walled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and

C. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the 100-year flood level, and

D. The enclosed area is not a "basement" as defined in this section.

In cases where the lowest enclosed area satisfies criteria A, B, C, and D above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

15. "New Construction (new buildings, factory-built home parks)": those structures or development for which the start of construction commenced on or after January 1, 1979.

16. "One Hundred (100) Year Flood": a flood, the magnitude of which has a one (1) percent chance of being equalled or exceeded in any given year or which, on the average, will be equalled or exceeded at least once every one hundred (100) years.

17. "Structure": anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.
18. "Substantial Improvement": any improvement to a structure which satisfies either of the following criteria:
- A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (i) before the improvement or repair is started, or (ii) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe conditions for the existing use.
 - B. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after January 1, 1979, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

RESERVED FOR FUTURE USE.

TITLE II - COMMUNITY PROTECTION**DIVISION 3 - BUILDING AND PROPERTY REGULATIONS*****CHAPTER 2
MINIMUM HOUSING CODE**

232-1 PURPOSE. The purpose of this chapter is to establish minimum requirements (housing code) for residential structures to be fit for human habitation, occupancy, or use.

232-2 The Community Development Director shall be responsible for the enforcement of this chapter and shall be the “local housing officer” with respect to the Code of Iowa.

232-3 All structures originally constructed for human habitation, occupancy, or use shall meet all of the following minimum requirements:

1. Connection to an approved water, sanitary sewer, and electric system.
2. Connection to an approved source to operate a heating system.
3. Utility services must not be terminated (turned off) for a period in excess of six (6) consecutive months.
4. The interior of the structure shall not be exposed to the elements such that deterioration of the building is occurring.
5. All window and door openings shall be utilized as originally intended. Window and door openings shall not be “boarded up.”
6. There shall be no openings in the exterior walls or roof to allow birds, animals, etc., to enter the structure.

232-4 Any residential structure that fails to meet any of the minimum requirements listed in Section 3 of this chapter shall be considered abandoned by the property owner. The Community Development Director shall declare the structure a public nuisance and initiate abatement proceedings under Title III, Chapter 1, Article 2 of the Estherville City Code or other applicable legislation.

TITLE II - COMMUNITY PROTECTION**DIVISION 3 - BUILDING AND PROPERTY REGULATIONS*****CHAPTER 3
MINIMUM REQUIREMENTS FOR COMMERCIAL STRUCTURES**

233-1 STATEMENT OF INTENT. In the interest of promoting the general welfare of the community and to protect the value of buildings and property, the image and character of a community is considered important. It is recognized that the community should be visually attractive as well as financially prosperous and the manner in which a use is accomplished is as important as the use. The quality of architecture and building construction is important to the preservation and enhancement of building and property values, prevention of the physical deterioration of buildings and the promotion of the image of the community and the general welfare of its citizens. Architectural design and use of materials for the construction of any building shall be subject to the approval of the City Council.

****233-2** All structures, except residential use structures placed, erected, assembled, constructed, or undergoing exterior remodeling within the General Business or Highway Commercial zoning districts, shall meet and satisfy the following minimum requirements:

1. Foundation. All structures shall have a continuous and complete frost-protected perimeter foundation. Foundation materials may be masonry, poured concrete, or metal and must extend below the normal frost line. The structure must be permanently attached to the foundation.
2. Exterior Walls Facing a Public Street. A minimum of seventy-five percent (75%) of all exterior building walls, excluding door and window openings, shall consist of brick, textured concrete block, stucco, natural or cultured stone, textured concrete, EIFS

*Revised 8-15-05; Ord. No. 660 (All of Chapter 3)

**Revised 6-16-08; Ord. No. 684

(exterior insulation and finish systems) or glass curtainwall. No wood, masonite, asphaltic material, aluminum, vinyl or steel siding, or nontextured concrete block shall be an acceptable wall material to meet the requirements of this subsection.

3. Exterior Walls Visible from a Public Street. A minimum of fifty percent (50%) of all exterior building walls, excluding door and window openings, shall consist of brick, textured concrete block, stucco, natural or cultured stone, textured concrete, EIFS (exterior insulation and finish systems) or glass curtainwall. No wood, masonite, asphaltic material, aluminum, vinyl or steel siding, or nontextured concrete block shall be an acceptable wall material to meet the requirements of this subsection.

If a building constructed after the effective date hereof, to which this Subsection C applies, includes a side wall that did not comply with the material requirements of this Subsection C because the side wall was not visible from a public place or way, and such side wall hereafter becomes visible because of the removal of an adjacent building, such side wall shall be finished in compliance with this Subsection C by the property owner, within one year from the date of its exposure.

4. Front Wall or Facade. All building walls facing a public street within the General Business zoning district shall be rectangular or shall include a facade to give a rectangular appearance.

5. Loading, Container, Equipment Areas. Loading areas and solid waste or recycling container areas, outside storage areas and heating, ventilation and air-conditioning mechanical equipment shall be located to the rear of the building, except that heating, ventilation and air-conditioning mechanical equipment may be located on the roof of the building. If such area is adjacent to a public street or to the front of another building (separated only by a public right-of-way), the area shall be screened from view.

6. Storm Water Drainage. Storm water drainage from the roof of the building shall be directed to the rear or side of the building and shall not be directed or discharged over any public sidewalk.

7. New Construction. The provisions of this section shall apply to all new construction accomplished after the effective date hereof. Whenever additions to existing buildings exceed fifty percent (50%) of the floor area of the existing building or one thousand (1,000) square feet, whichever is less, then the existing building to which the addition is made shall also comply with this section.

TITLE II - COMMUNITY PROTECTION**DIVISION 3 - BUILDING AND PROPERTY REGULATIONS*****CHAPTER 4
RENTAL HOUSING CODE**

234-1 PURPOSE. The purpose of this chapter is to establish minimum requirements for residential rental structures to be fit for human habitation, occupancy or use. To protect, preserve and promote the physical health and social well being of the people. To prevent and control the incidence of communicable diseases, to reduce environmental hazards to health, to regulate rental dwellings for the purpose of maintaining adequate sanitation and to protect the safety of the people.

234-2 RESPONSIBILITY. The owner of the residential rental housing unit(s) shall provide and maintain the structure and facilities in compliance with this chapter. A person shall not permit another person to occupy any residential rental unit that is not in compliance with this chapter.

****234-3 APPLICABILITY.** The provisions of this chapter shall apply uniformly to all residential rental housing unit(s), irrespective of the date of initial construction. The provisions of this chapter shall apply to all residential rental units except 234-7 shall not apply to hospitals, licensed nursing homes, accredited colleges, properties owned by federal, state or locally approved housing authorities, licensed group homes for disabled persons, and residential units within primary residence of the owner used by related parties of the owner. This chapter does not apply to any residential housing units occupied by the parents, grandparents, children or grandchildren of the owner or to any lodging unit subject to Chapter 423A of the Code of Iowa, which is subject to Iowa hotel and motel tax.

*Revised 1-3-11; Ord. No. 703 (All of Chapter 4)

**Revised 12-19-11, Ord. No. 709

234-4 MINIMUM STANDARDS. All rental housing units and structures intended for human habitation, occupancy or use shall meet all of the following minimum requirements:

1. EXTERIOR

- A. General. The structure shall be maintained in good repair and structurally sound so as not to pose a threat to the public health, safety or welfare.
- B. Walkways. All walkways, stairs and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
- C. Accessory structures. All accessory structures, including detached garages, sheds, fences and walls, shall be maintained structurally sound and in good repair.
- D. Foundation walls. All foundation walls shall be free from open cracks, breaks and holes and shall be kept in such condition as to prevent the entry of rodents and other pests.
- E. Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials and shall be maintained weatherproof.
- F. Roofs and drainage. The roof shall be sound, tight and not have defects that admit rain. Roof water shall not be discharged in a manner that creates a public nuisance.
- G. Stairways, decks, porches and balconies. Every exterior stairway, deck, porch, and balcony shall be maintained structurally sound and in good repair.
- H. Windows, skylights and door frames. Every window, skylight, door and frame shall be kept in sound condition, in good repair, and shall not be boarded up. Glass shall be free from major cracks and holes.

2. INTERIOR

- A. General. The interior of a structure and equipment therein shall be maintained in good repair and structurally sound so as not to pose a threat to the health, safety or welfare of the occupants. Occupants shall keep that part of the structure which they occupy or

control in an acceptable condition. Every owner of a structure containing two or more dwelling units shall maintain, in a clean manner, the shared or public areas of the structure and exterior property.

- B. Stairs. Every stairway shall be maintained in sound condition and in good repair. No permanent obstructions permitted in hallways or stairways.
- C. Doors. Each interior door shall be easily openable and in good repair. Each exterior door shall be of proper size to fit the frame and shall be equipped with a lock.
- D. Walls. Interior walls shall be free from holes, excluding nail holes, and shall cover the building structure.
- E. Ceilings. Ceilings shall be free from holes and cover the building structure.
- F. Mold. Every structure shall be free from obvious mold growth.
- G. Flooring. Flooring shall be free from tripping hazards.

3. ELECTRICAL SYSTEM

- A. Service. Every rental unit shall be connected to an approved electrical system.
- B. Fixtures. All fixtures and outlets shall be in a safe and functional condition or properly covered.

4. WATER SYSTEM

- A. Service. Every rental unit shall be connected to an approved water system.
- B. Fixtures. All plumbing fixtures and pipes shall be maintained in a safe and functional condition, free from leaks.
- C. Water Heater. Water heaters shall be able to provide an adequate supply of hot water to every sink, bathtub, shower and laundry facility. The property owner shall ensure proper installation and maintenance of water heater(s).

5. SEWER SYSTEM

- A. Service. Every rental unit shall be connected to an approved sanitary sewer system.
- B. Fixtures. All fixtures and pipes shall be maintained in a safe and functional condition, free from leaks.

6. HEATING FACILITIES

- A. Facilities required. Dwellings shall be provided with heating facilities capable of maintaining adequate heat in all living spaces, bedrooms and bathrooms. The use of cooking appliances or portable space heaters shall not be used to meet this requirement.

7. MEANS OF EGRESS

- A. General. Every dwelling unit shall have at least two means of egress. If said means is a below grade window it shall have a net clear opening of at least 5.7 square feet. In addition, every bedroom shall have at least two means of egress. If said means is a below grade window it shall have a net clear opening of at least 5.7 square feet.

8. EXTERMINATION

- A. Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.
- B. Extermination – Single Family Dwellings.
 - 1.) Owner: the owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.
 - 2.) Occupant: the occupant of a single-family dwelling shall be responsible for the continued rodent and pest free condition of the premises.

C. Extermination – Multiple occupancy.

1.) Owner: the owner of a structure containing two or more dwelling units, a multiple occupancy, or a rooming house, shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination of all affected areas of the property.

2.) Occupant: the occupant of any structure shall be responsible for the continued rodent and pest-free condition of that portion of the structure occupied. The owner shall be responsible to ensure that the units remain rodent and pest free and may assess the costs to the responsible tenant.

Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

234-5 OCCUPANCY. Any residential rental structure that fails to meet any of the minimum requirements listed in 234-4 of this chapter shall not be considered in compliance and shall not be rented or occupied by any person other than the owner of record.

234-6 REGISTRATION. Every residential rental dwelling shall be registered with the City Code Official within 30 days of the effective date of this ordinance. Units placed in rental service after the adoption of this ordinance shall be registered within 30 days.

Failure to register shall constitute a violation of this chapter. Each day a unit fails to be registered constitutes a separate violation.

It shall be the property owner's responsibility to notify the City Code Official if the structure is sold or no longer used as rental property within 30 days of the event.

234-7 INSPECTIONS. Residential unit(s) shall be inspected by one of the following processes, unless said unit is exempt as defined in 234-3 of this chapter.

- A. Self-inspection. Whereby the owner and tenant shall each separately perform an inspection of the rental unit on the forms provided by the City of Estherville and said parties shall complete and submit to the City those inspection forms within 30 days after initial registration of the unit. Failure to correct deficiencies or discrepancies in the self-inspection forms may at the City's discretion require independent inspections by a certified home inspector.
- B. City inspection. In lieu of self-inspection the owner may elect for the City to have the unit inspected by a party designated by the City and the owner of said unit shall be responsible for all fees in connection therewith. Any inspection requested by the City shall use the same criteria and forms as the self-inspection forms set forth in the preceding paragraph.
- C. Exempt property. Any properties which are exempt as defined in 234-3 shall not be required to obtain an inspection by either means.
- D. An inspection shall be performed by the landlord and tenant and records retained by the landlord, tenant and city official upon any of the following occurrences:
 - 1.) Change of occupancy.
 - 2.) Not less than every three years from the date of the original occupancy, or the effective date of this ordinance whichever is later.
- E. Failure to have an inspection or provide an inspection report to the City in the year scheduled shall constitute a simple misdemeanor punishable by fine or suspension of rental privileges. Each day constitutes a separate offense.

234-8 INSPECTORS. For purposes of this chapter, “certified” shall mean having successfully passed the National Home Inspector Examination, or similarly recognized examination, a licensed contractor or others as deemed qualified by the City.

Inspectors shall be registered with the City and provide such documentation as required below:

- A. Verification of having passed the National Home Inspector Examination, or similarly recognized examination or,
- B. Contractor’s license from the State of Iowa or,
- C. Other information as deemed necessary by the City and,
- D. Certificate of general liability insurance in an amount of at least \$1,000,000.

234-9 COMPLIANCE SUSPENSION. Whenever it is found that conditions exist in a rental unit, which is in violation of any provisions of this chapter, the Code Official shall give notice in writing to the property owner of the rental unit that unless such conditions are corrected in a reasonable time, to be determined by the Code Official, the unit shall not be occupied.

234-10 CODE OFFICIAL The Community Development Director shall be the Code Official for purposes of this chapter.