

**Zoning Code  
Chapter 12**

**Shoreland Regulations**

**Article 1. Purpose and Intent, §§ 12-010**

**Article 1. Purpose and Intent**

**Section 12-010. Purpose and Intent.**

- (1) **Policy.** The unregulated use of shorelands in the City affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise use and development of shorelands of public waters.
- (2) **Statutory Authorization.** These shoreland regulations are adopted pursuant to the authorization and policies contained in Minn. Stat. Ch. 103F, Minnesota Regulations, Parts 6120.2500 through 6120.3900, and the planning and zoning enabling legislation in Minn. Stat. Ch. 462.
- (3) **Jurisdiction.** The provisions of this Code shall apply to shorelands of the public water bodies as classified in Section 12-120 of this Code. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this Code.
- (4) **Compliance.** The use of any shoreland of public waters, the size and shape of lots, the use, size, type and location of structures on lots; the grading and filling of any shoreland area, and the cutting of shoreland vegetation shall be in full compliance with the terms of this Code and other applicable regulations.
- (5) **District Application.** The shoreland overlay district shall be superimposed (overlaid) upon all the zoning districts as identified in Chapter 3 of the City Zoning Code as existing or amended by the text and map of this Code. The regulations and requirements imposed by the shoreland overlay district shall be in addition to those established by the base zoning district which jointly apply. Under joint application of the districts, the more restrictive requirements shall apply.
- (6) **Exemption.** A structure or use which was lawful before adoption of this Chapter, but which is not in conformity with the provisions of the shoreland overlay district, may be continued subject to Chapter 8, Article 4 of the Zoning Code.

**Article 2. Protected Waters and Clarification, §§ 12-110 – 12-120**

**Article 2. Protected Waters & Classification**

**Section 12-110. District Boundaries.**

The boundaries of the shoreland overlay district within the City shall consist of all lands as described within the definition of shoreland in Article III of this Chapter.

**Section 12-120. Waters Classifications.**

The following waters have been given classifications and are regulated as such under state law:

ID	Name	DNR classification	OHWL
62007600	Jones Lake	Natural Environment	895.2 ft
62006700	Long Lake	General Development	864.93 ft
62006900	Pike Lake	General Development	867.77 ft
62007700	Poplar Lake	Natural Environment	Elevation not established *
62006800	Rush Lake	Natural Environment	870.4 ft
M-059	Rice Creek	Tributary Stream	Top of Bank
*see definition of Ordinary High Water Level (OHWL)			

### Article 3. Definitions

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Along with the definitions contained in Chapter 2 of the Zoning Code the following shall apply:

ANCILLARY RECREATIONAL USES	Recreational elements which are portable and subordinate to a residential principle use on the property including play apparatus & sporting equipment with a 200 square feet footprint or smaller.
BLUFF IMPACT ZONE	The area between the bluff and land located within twenty (20) feet from the top of the bluff.
BLUFF	<p>A topographic feature such as a hill, cliff, or embankment having all of the following characteristics:</p> <ul style="list-style-type: none"><li>• part or all of the feature is located in a shoreland area;</li><li>• the slope rises at least 25 feet above the ordinary high water level of the waterbody;</li><li>• the grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and</li><li>• the slope must drain toward the waterbody.</li></ul> <p>An area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff.</p>
BLUFFLINE	A line delineating the top of the bluff connecting the points at which the angle of ascent becomes less than twelve percent (12%). More than one (1) bluffline may be encountered.
COMMISSION	The City of New Brighton Planning Commission.
COMMISSIONER	The Commissioner of the Department of Natural Resources of the State of Minnesota.

DEVELOPMENT	The making of any material change in the use or appearance of any structure or land including reconstruction; alteration of the size of any structure; alteration of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; the dividing of land into two (2) or more parcels.
GENERAL DEVELOPMENT LAKES	Lakes that have more than 225 acres of water per mile of shoreline and 25 dwellings per mile of shoreline, and are more than 15 feet deep.
IMPERVIOUS SURFACE	A constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.
INTENSIVE VEGETATION CLEARING	The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.
NATURAL ENVIRONMENT LAKES	Lakes that have less than 150 total acres, less than 60 acres per mile of shoreline, and less than three (3) dwellings per mile of shoreline. They may have some winter kill of fish; may have shallow, swampy shoreline; and are less than fifteen (15) feet deep.
ORDINARY HIGH WATER LEVEL (OHWL)	The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel.
PUBLIC WATER	Any waters as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a.
SETBACK	The minimum horizontal distance from a building, structure, fence, or parking lot to a lot line or Ordinary High Water Level or top of bluff.
SHORE IMPACT ZONE	The land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

SHORELAND	Land located within 1,000 feet from the normal high water level of a lake, pond, or flowage and land within 300 feet of a river or stream.
STEEP SLOPE	Lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more that are not bluffs.
TOE OF BLUFF	The lower point of a fifty (50) foot segment with an average slope exceeding eighteen (18) percent.
TOP OF BLUFF	The higher point of a fifty (50) foot segment with an average slope exceeding eighteen (18) percent.

**Article 4. Administration and Permits, §§ 12-310 – 12-320**

**Article 4. Administration & Permits**

**Section 12-310. Permits Required.**

- (1) When a building permit is required for any activity regulated herein, no additional shoreland alteration permit shall be required. However, the standards for the activity as contained herein shall be applied to the issuance of that permit.
- (2) A shoreland alteration permit shall be required for all construction and development activity regulated within this Chapter including for:
  - A. All grading, filling and excavation activity as regulated within 12-510.
  - B. All shoreland vegetation alteration activity regulated under Section 12-500.

**Section 12-320. DNR Notification & Approval Procedures.**

- (1) Notification shall be provided to the DNR Area Hydrologist at least 10 days prior to a public hearing to consider variances, special use permits, planned developments, minor subdivisions, and plats within the shoreland area or amendments to the shoreland standards.
- (2) With regard to planned developments, preliminary plans shall be approved by the DNR before final City Council approval.
- (3) Notification shall occur 10 days after a final decision on all variances, special use permits, planned developments, minor subdivisions, and plats.

**Article 5. Development Standards, §§ 12-410 – 12-540**

**Article 5. Development Standards**

**Section 12-410. Lot Area and Lot Width.**

Lot area and width standards shall be regulated per the underlying zoning district of the property, except that under no circumstance shall the minimum lot area be less than 20,000 square feet for riparian lots.

**Section 12-420. Use.**

The use of all properties within the shoreland area shall be regulated per the underlying zoning district.

**Section 12-430. Height.**

Height of structures and other facilities on lots shall be regulated per the underlying zoning district of the property, except for where specified herein.

**Section 12-440. Impervious Surface.**

Impervious surface coverage shall be limited to 50% of any lot or parcel.

**Section 12-450. Setback Requirements.**

- (1) Where structures exist on the adjoining lots, structure setbacks may be altered allowing them closer to the water's edge without a variance to conform to the adjoining setbacks from the ordinary high water level. The distance shall be determined by the average setback of structures on the two immediately adjoining lots and shall be allowed only provided the proposed structure is not located in a shore impact zone.
- (2) Along with the setback requirements in the underlying zoning district, the following setback requirements from the Ordinary High Water Level (OHWL) shall apply to all principal & accessory buildings which do not meet the provisions of Section 12-450, item number 1 (above).

Water Body	Setback
Jones Lake	50 feet
Long Lake	50 feet
Pike Lake	50 feet
Poplar Lake	50 feet
Rush Lake	150 feet
Rice Creek	50 feet

- (3) Along with the setback requirements in the underlying zoning district, and where a bluff exists, all structures must meet a 30 foot setback from the top of bluff for all lake and stream waters classifications.
- (4) The following types of structures are exempt from OHWL setbacks indicated in 12-450, Subdivision 2, but are required to follow the standards contained in Sections 12-470 and 12-490:
  - A. Stairways, stairway landings, and pedestrian lifts;
  - B. Watercraft lifts, landing facilities and docks;
  - C. Fences, retaining walls, and ancillary recreational uses;
  - D. Public park, beach, and marina facilities and other public improvements.

**Section 12-460. Shore Impact Zone**

The Shore Impact Zone shall consist of the following setback as measured from the OHWL:

Water Body	Shore Impact Zone
Jones Lake	25'
Long Lake	25'
Pike Lake	25'
Poplar Lake	25'
Rush Lake	75'
Rice Creek	25'

**Section 12-470. Fences and Wall Standards.**

- (1) All fences must meet City zoning standards as contained in Chapter 4, Article 7, Section 4-540 (residential), Chapter 5, Article 6, 5-550 (businesses) and Chapter 6, Article 3, Section 6-400 (industrial). Additionally, the following standards shall apply:
  - A. No fences shall be placed or constructed within the shore impact zone of any waterbody.
  - B. All fences shall meet the setback from the OHWL required for buildings, except fences 3 ½ feet in height or less which are comprised of a surface area of 30% percent or less solid material.
- (2) The following standards shall be required for retaining walls:

- A. Only retaining walls which are part of an erosion and sediment control plan shall be permitted in the shore impact zone and must meet the standards contained in Section 12-470 and 12-530.
  - B. Any wall which does not meet the required structure setback from the OHWL shall be no more than 3 ½ feet in height.
- (3) Any enclosure for the confinement of animals must meet principal structure setback requirements.

**Section 12-480. Standards for Commercial, Industrial, Public and Semi Public Uses.**

Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lot or parcels with public waters frontage, must either be setback double the normal OHWL setback or be substantially screened from view from the water by vegetation or topography, assuming, summer, leaf-on conditions. Those with water-oriented needs must meet the following standards:

- (1) In addition to meeting impervious coverage limits, setback, and other zoning standards presented elsewhere in this Chapter, the uses must be designed to incorporate topographic and vegetative screening of parking area and structures.
- (2) Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.
- (3) Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:
  - A. Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten (10) feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters.
  - B. Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

### **Section 12-490. Stairways, Lifts and Landings.**

Stairways, Lifts and Landings which do not meet the setback standards for principal structures shall meet the following standards:

- (1) Stairways, stairway landings, and pedestrian lifts shall be located whenever reasonable in the most visually inconspicuous portions of lots, as viewed from the surface of the public waterbody, assuming summer, leaf- on conditions.
- (2) Construction and Design:
  - A. Stairways and pedestrian lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned developments where more than one lot or more than four dwelling units are served.
  - B. Landings for stairways and pedestrian lifts on residential lots must not exceed 32 square feet in area. Landings not exceeding 60 square feet may be used for commercial properties, public open-space recreational properties, and planned developments where more than one lot is served.
  - C. Canopies or roofs are not allowed on stairways, stairway landings, or pedestrian lifts.
  - D. Stairways, stairway landings, and pedestrian lifts may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.

### **Section 12-500. Shoreland Vegetation Alterations.**

- (1) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water oriented accessory structures or facilities provided that:
  - A. The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced.
  - B. Along rivers, existing shading of water surfaces is preserved.
  - C. The vegetation alternations do not constitute intensive vegetation clearing as defined in Article 3 of this Chapter.

- D. The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards and the removal of plants deemed noxious under State or Local Noxious Weed Law.

**Section 12-510. Shoreland Grading & Filling Alterations.**

- (1) Grading and filling and excavations necessary for the construction of structures and driveways under validly issued building permits for these facilities do not require the issuance of a separate shoreland alteration permit however considerations and conditions as stated in 12-510, Subdivisions 2-3 must be adhered to during the issuance of building permits, land alteration permits, special use permits, variances and subdivision approvals within the shoreland area.
- (2) Notwithstanding item number 1 (above) the movement of more than ten cubic yards of material within shore or bluff impact zones and the movement of more than 50 cubic yards of material outside of shore and bluff impact zones will require a shoreland alteration permit unless a land alteration permit is required.
- (3) Alteration Standards & Requirements
  - A. No person may fill, drain, excavate or otherwise alter the hydrology of a wetland without first obtaining a permit from the Rice Creek Watershed District.
  - B. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible.
  - C. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible.
  - D. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.
  - E. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.
  - F. Fill or excavated material must not be placed in a manner that creates an unstable slope.
  - G. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must create finished slopes of less than three feet horizontal to one foot vertical slope.

- H. Fill or excavated material must not be placed in bluff impact zones.
- I. Any alterations below the ordinary high water level of public waters must first be authorized by the Commissioner under Minn. Stat. 103G.245.
- J. Alterations of topography must only be allowed if they are accessory to permitted or special uses and do not adversely affect adjacent or nearby properties.
- K. Placement of natural rock rip rap, including associated grading of the shoreline and placement of a filter blanket, is allowed if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the rip rap is within ten feet of the ordinary high water level, and the height of the rip rap above the ordinary high water level does not exceed three feet. This must only be done in accordance with other State and Federal regulations.

**Section 12-520. Roads and Impervious Surface.**

- (1) Public and private roads, driveways, and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. They must be designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.
- (2) Roads, driveways, impervious surface, and parking areas must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.

**Section 12-530. Stormwater Management.**

- (1) When possible, existing natural drainage-ways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- (2) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials and facilities.
- (3) When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.

- (4) New constructed stormwater outfall to public waters must provide for filtering or settling of suspended solids and skimming or surface debris before discharge.
- (5) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
- (6) A Rice Creek Watershed District permit is required for projects that create or reconstruct 10,000 square feet or more of impervious surface.

**Section 12-540. Sanitary Provisions.**

All lots within the shoreland district shall be connected to the public water and sanitary sewer systems and old sewer and water systems shall be abandoned in conformance with State law and City ordinances.

**Editor's Notes:**

Chapter 12 established by Ord. No. 844 on July 26, 2016

Terri Haarstad, City Clerk