ORDINANCE NO. 14-15

CHAPTER 22
SHORELAND ZONING

AN ORDINANCE TO REPEAL AND RECREATE SECTION 22.22 OF THE MUNICIPAL CODE OF THE CITY OF WAUKESHA, WISCONSIN

THE COMMON COUNCIL OF THE CITY OF WAUKESHA DO ORDAIN AS FOLLOWS:

SECTION I. Section 22.22 of the Waukesha Municipal Code is repealed and recreated as follows:

(1) STATUTORY AUTHORIZATION, FINDINGS OF FACT, STATEMENT OF PURPOSE AND TITLE.

(a) STATUTORY AUTHORIZATION. This ordinance is adopted pursuant to the authorization in Wis. Stats. §§62.23 and 62.233.

(b) FINDING OF FACT AND PURPOSE. Uncontrolled use of shorelands and pollution of the City's navigable waters 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:

1. Promote the public health, safety, convenience and general welfare;

2. Limit certain land use activities detrimental to shorelands; and

3. Preserve shore cover and natural beauty by controlling the location of structures in shoreland areas and restricting the removal of natural shoreland vegetation.

(2) GENERAL PROVISIONS.

(a) COMPLIANCE. The use of shorelands within the City's shoreland area shall comply with the terms of this ordinance and other applicable local, state or federal regulations. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this ordinance.

(b) ABROGATION AND GREATER RESTRICTIONS.

1. This ordinance supersedes all the provisions of any other applicable municipal ordinance except that where another municipal 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.

2. 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 shall prevail.

(c) INTERPRETATION. The provisions of this ordinance shall be deemed to be minimum requirements, 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 or Wisconsin Constitution.

(d) 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.

(e) APPLICABILITY OF SHORELAND DISTRICT REGULATIONS. The Shoreland Zoning District regulations apply only to the following shorelands:

1. A shoreland that was annexed by the City of Waukesha after May 7, 1982, and that prior to annexation was subject to a county shoreland zoning ordinance under Wis. Stats. §59.692; and

2. A shoreland that before incorporation by the City of Waukesha was part of a town that was subject to a county shoreland zoning ordinance under Wis. Stats. §59.692 if the date of incorporation was after April 30, 1994.

(f) DISTRICT BOUNDARIES. The Shoreland District areas regulated by this ordinance shall include all the lands in the City of Waukesha that are:

1. Within 1,000 feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources Surface Water Data viewer available on the DNR website, or are shown on United States Geological Survey quadrangle maps or other zoning base maps.

2. Within 300 feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.

3. Determinations of navigability and ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Wisconsin Department of Natural Resources for a final determination of navigability or ordinary highwater mark.

4. Pursuant to Wis. Stats. §62.233, the Shoreland Zoning District does not include lands adjacent to an artificially-constructed drainage ditch, pond, or retention basin if the drainage ditch, pond or retention basin is not hydrologically connected to a natural navigable water body.

(g) EFFECT OF EXISTING LAND DIVISION, SANITARY, ZONING AND OTHER REGULATIONS. The lands within the Shoreland Zoning District are subject to all applicable provisions of the City of Waukesha Municipal Code. Where the provisions of this ordinance are more restrictive than other regulations in the Municipal Code, the provisions of this ordinance shall apply.

(3) SETBACKS FROM THE WATER.

(a) PRINCIPAL BUILDING SETBACKS.

1. All principal buildings shall be set back at least 50 feet from the ordinary high-water mark.

2. A setback less than that required by subsection (a)1. may be allowed if all of the following apply:

a. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building; and

b. The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

(b) ACCESSORY STRUCTURES. Accessory structures meeting all applicable requirements of the underlying zoning district and the City Municipal Code may be placed in side and street yards.

(4) VEGETATIVE BUFFER ZONE. Pursuant to Wis. Stats. §62.233, a landowner must maintain a vegetative buffer zone, as follows:

(a) A person who owns Shoreland property that contains vegetation must maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in sub. (b).

(b) If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

(c) A person who is required to maintain or establish a vegetative buffer zone under sub. (a) may remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage and extends no more than 35 feet inland from the ordinary high-water mark.

(5) DEFINITIONS. In this ordinance:

(a) "Principal building" means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

(b) "Shorelands" has the meaning given in Wis. Stats. §59.692(1)(b).

(c) "Shoreland setback area" has the meaning given in Wis. Stat. sec. 59.692(1)(bn).

SECTION II. All ordinances or parts of ordinances inconsistent with or contravening the provisions of this ordinance are hereby repealed.

SECTION III. This ordinance shall take effect and be in force from and after the date of its passage and publication.

Passed this 5th day of May, 2015

Approved this 6th day of May, 2015.

Shawn N. Reilly, Mayor

Attest:

Gina L. Kozlik, City Clerk