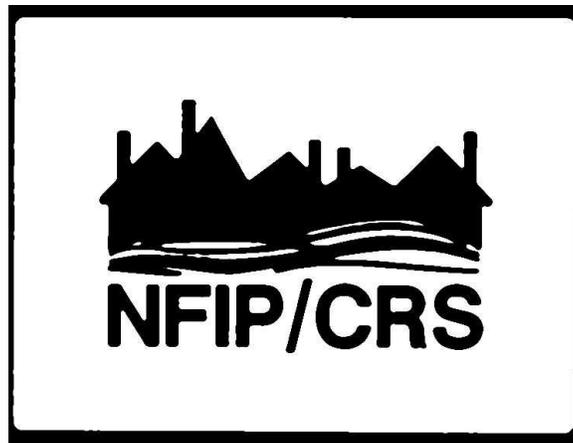


*Higher Regulatory Standards*

**MODEL FLOODPLAIN MANAGEMENT  
ORDINANCE**

**For Jefferson County, Alabama,  
Municipalities Participating in the  
National Flood Insurance Program (NFIP)**



October 9, 2006

**Based on the Floodplain Management Ordinance for Unincorporated  
Areas of Jefferson County, Alabama, Ordinance 1771, adopted by the  
Jefferson County Commission on September 19, 2006**

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## FLOODPLAIN MANAGMENT ORDINANCE

For \_\_\_\_\_ (*Insert name of municipality*), Alabama

Ordinance No. \_\_\_\_\_

**AN ORDINANCE TO REPEAL THE EXISTING FLOODPLAIN ORDINANCE OF \_\_\_\_\_ (*insert name of municipality*), ALABAMA, ADOPTED ON \_\_\_\_\_ (*insert date of adoption of original floodplain management regulations*), TO ADOPT A NEW FLOODPLAIN MANAGEMENT ORDINANCE AND TO ESTABLISH AN EFFECTIVE DATE THEREOF.**

**WHEREAS**, the frequencies and damages caused by flooding events throughout Jefferson County, Alabama, in recent years have significantly increased; and

**WHEREAS**, flooding has caused substantial and recurring damages to properties and threats to public safety; and

**WHEREAS**, considerable public expenses have been incurred by Federal, State, and local agencies through acquisition projects, structural measures, emergency services enhancements, flood studies, and other activities and projects designed to mitigate the potential damages and threats posed by flooding; and

**WHEREAS**, it is in the interest of the public safety and welfare to enact and enforce higher regulatory standards for the prevention of future flood damages and threats to property and life; and

**WHEREAS**, these higher regulatory floodplain management standards balance the economic benefits to be gained by reduced flood damages resulting from the impacts of such regulations on property values and the economic vitality and growth of \_\_\_\_\_ (*insert name of municipality*).

**NOW, THEREFORE, BE IT ORDAINED, AS FOLLOWS:**

**Section 1.** That the existing Floodplain Management Regulations (*or insert title of floodplain management regulations*), adopted by Ordinance No. \_\_\_\_\_ (*insert number of ordinance, if applicable*) adopted on \_\_\_\_\_ (*insert date of adoption*), be repealed in its entirety.

**Note:** *If the existing floodplain management regulations are contained within the municipality's zoning ordinance, the repeal of such regulations would need to follow statutory procedures for the amendment of the municipal zoning ordinance, including*

***notice requirements and a public hearing and recommendation of the Planning Commission.***

**Section 2. That a new Floodplain Management Ordinance with higher regulatory standards for flood hazard mitigation, consistent with the Floodplain Management Ordinance for Unincorporated Areas of Jefferson County, Alabama, adopted by the Jefferson County Commission on September 19, 2006, be adopted by the \_\_\_\_\_ (*insert "City" or "Town"*) of \_\_\_\_\_ (*insert name of municipality*) to read as follows:**



- E. Control the alteration of natural *floodplains*, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

### **SECTION 103. OBJECTIVES**

The objectives of this Ordinance are:

- A. To protect human life and health;
- B. To balance the benefits of reduced *flood* damages with the impacts on property values and economic development;
- C. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in *floodplains*;
- D. To help maintain a stable tax base by providing for the sound use and development of *flood* prone areas in such a manner as to minimize *flood* blight areas;
- E. To minimize expenditure of public money for costly *flood* control projects;
- F. To minimize the need for rescue and relief efforts associated with *flooding* and generally undertaken at the expense of the general public;
- G. To minimize prolonged business interruptions; and
- H. To insure that potential homebuyers are notified that property is in a *flood*-prone area.

## **ARTICLE 2. GENERAL PROVISIONS**

### **SECTION 200. LANDS TO WHICH THIS ORDINANCE APPLIES**

This Ordinance shall apply to all *Special Flood Hazard Areas* within the municipal limits of (insert name of municipality), Alabama.

### **SECTION 201. BASIS FOR SPECIAL FLOOD HAZARD AREAS**

The *Special Flood Hazard Areas* identified by the Federal Emergency Management Agency in its *Flood Insurance Study (FIS)* for Jefferson County, Alabama and incorporated areas, dated January 20, 1999, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this Ordinance. *Special Flood Hazard Areas* may also include those areas known to have flooded repetitively, or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated into the *FIS*. As soon as practicable,

but not later than six months after the date such information becomes available, the community shall notify FEMA of the changes by submitting a *Letter of Map Revision* with supporting technical or scientific data.

## **SECTION 202. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be required in conformance with the provisions of this Ordinance prior to the commencement of any *development* activities, within the municipal limits of \_\_\_\_\_ (*insert name of municipality*), including but not limited to construction of or improvements to *buildings* or other *structures*, utilities, roads, bridges, infrastructure, mining, dredging, filling, grading, paving, *excavation*, drilling operations, and storage of vehicles, equipment or materials, whether conducted by a private individual, business, or firm, a non-profit agency, or a Federal, State, or local public agency.

## **SECTION 203. COMPLIANCE**

No *structure* or land shall hereafter be located, extended, converted or altered and no *development* shall be undertaken without full compliance with the terms of this Ordinance and other applicable regulations. Compliance with this Ordinance shall be deemed protective for all zoning classifications.

## **SECTION 204. NON-CONFORMING STRUCTURES LOCATED WITHIN THE SPECIAL FLOOD HAZARD AREA**

The lawful use of a *structure* or the lawful use of land existing at the *Effective Date of this Ordinance* may be continued although such *structure* or use does not conform to this Ordinance, except any modification, alteration, improvement, expansion, or enlargement of a nonconforming *structure* shall comply with applicable requirements of this Ordinance.

## **SECTION 205. MAINTENANCE REQUIRED**

- A. The disposal or dumping of debris, brush, trash, garbage, litter, or similar materials within a publicly-maintained drainage way and the disposal, accumulation, or dumping of debris, brush, trash, garbage, litter, or other materials which can obstruct or interfere with the discharge of *flood* waters within the *Floodway* shall be prohibited.
- B. The \_\_\_\_\_ (*insert "City" or "Town"*) shall have the right to cross private property for the purposes of inspecting and maintaining all publicly-maintained drainage ways and all *Floodways*.

## **SECTION 206. ABROGATION AND GREATER RESTRICTIONS**

This Ordinance is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. This Ordinance shall not abrogate the rights obtained under any State or Federal permit.

#### **SECTION 207. INTERPRETATION**

- A. In the interpretation and application of this Ordinance all provisions shall be:
1. Considered as minimum requirements; and
  2. Deemed neither to limit nor repeal any other powers granted under State statutes.
- B. Where *Base Flood Elevations* have been established and there appears to be a discrepancy between actual field conditions or best available topographic data and the *flood zone* boundaries shown on the *Flood Insurance Rate Map (FIRM)*, the more restrictive boundary interpretation shall govern for the purpose of delineating *Special Flood Hazard Areas* regulated by this Ordinance. Where best available topographic data indicates a property or any portion of a property should be excluded from the *FIRM flood zone* designation, a *Letter of Map Amendment* may be filed with FEMA to remove such area from the *Special Flood Hazard Areas* regulated by this Ordinance.

#### **SECTION 208. WARNING AND DISCLAIMER OF LIABILITY**

The degree of *flood* protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger *floods* can and will occur; *flood* heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the *Special Flood Hazard Areas* or uses permitted within such areas will be free from *flooding* or *flood* damages. This Ordinance shall not create liability on the part of \_\_\_\_\_ (*insert name of municipality*), or by any officer or employee thereof, for any *flood* damages that result from reliance on this Ordinance or any administrative decision lawfully made there under.

#### **SECTION 209. PENALTIES FOR VIOLATION**

*Violation* of the provisions of this Ordinance or failure to comply with any of its requirements, including *violation* of conditions and safeguards established in connection with grants of *Variances*, shall constitute a misdemeanor on the part of the property owner. It shall be the duty of the Floodplain Administrator to provide a property owner a written Notice of *Violation* with at least fourteen (14) days to correct such *violation*. Following notice and opportunity to correct a *violation*, any person, firm, corporation, or agency who continues in *violation* of this Ordinance, fails to obtain the permits and certifications required herein, or who violates any provision, requirement or amendment of this Ordinance, shall be guilty of a misdemeanor, and upon conviction thereof, be

fined not more than FIVE HUNDRED DOLLARS (\$500.00) per *violation*, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent \_\_\_\_\_ (*insert name of municipality*), from taking such other lawful actions as is necessary to prevent or remedy any *violation*.

## **SECTION 210. RIGHT OF UTILITIES NOT TO BE IMPAIRED**

This Ordinance shall not be construed to impair: (1) the right of eminent domain granted by State laws to utilities, whether public or private, or (2) their right to design, locate, erect, construct, reconstruct, alter or maintain utility poles, towers, lines, conduits, pipes or mains reasonably required in the public service or (3) their right to exercise authority conferred by statute, franchise, certificate of convenience and necessity, license or easement.

## **SECTION 211. PARTICIPATION IN COUNTY FLOODPLAIN MANAGEMENT REPOSITORY**

The \_\_\_\_\_ (*insert "City" or "Town"*) hereby acknowledges participation and cooperation in the Jefferson County repository of *floodplain* management information to be administered by the Floodplain Administrator for Jefferson County and shared among cooperating municipalities within Jefferson County. The Jefferson County Floodplain Administrator shall maintain a repository of available records and information related to *floodplain* management, including but not limited to the following items:

1. Records of all Letters of Map Revisions and Letters of Map Amendments approved by FEMA within the *County* and cooperating municipalities.
2. All hydrologic and hydraulic studies and technical data related to *flooding* within the *County* and cooperating municipalities.
3. Topographic and *flood* elevation data for the *County* and cooperating municipalities.
4. Technical guidance and informational materials published by FEMA and other sources.
5. Records of all *Variances* to this Ordinance, including the justification for granting each *variance* within the *County* and cooperating municipalities.
6. Documentation of *flood* events within the *County*, including rainfall data, *flood* elevations, damage assessments, and reported impacts on flooded *buildings* and public infrastructure within the *County* and cooperating municipalities.
7. Copies of all public reports, studies, and plans related to *floodplain* management within the *County* and cooperating municipalities.

8. As-built certifications and plans approved for compliance with this Ordinance for all *developments* within the *County* and cooperating municipalities.
9. Such other information, records, data, and resources that will assist in the coordination and documentation of *floodplain* management activities within the *County* and cooperating municipalities.

### ARTICLE 3. ADMINISTRATION

#### SECTION 300. APPOINTMENT AND QUALIFICATIONS OF FLOODPLAIN ADMINISTRATOR AS ORDINANCE ADMINISTRATOR

The Mayor shall appoint an individual to administer and implement the provisions of this Ordinance and direct the \_\_\_\_\_ (*insert "City's" or "Town's"*) Flood Hazard Mitigation Program. If the Floodplain Administrator is not a qualified *Registered Professional Engineer*, the \_\_\_\_\_ (*insert "City" or "Town"*) shall retain or assign a *Registered Professional Engineer* with training and experience in civil or environmental engineering, hydrology, and hydraulic engineering to assist the Floodplain Administrator in the administration and enforcement of this Ordinance.

***Note: The appointment and qualifications of the Floodplain Administrator may vary from municipality to municipality. In the case of most small cities and towns, the chief building inspector can perform this function with the assistance of a consulting city engineer. In some cases, a municipality may retain a qualified consultant or engineer to serve as Floodplain Administrator or enter into an intergovernmental agreement with the Jefferson County Commission for technical and administrative assistance with this Ordinance.***

#### SECTION 301. PERMIT PROCEDURES

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the community prior to any *development* activities, and may include, but not be limited to the following: plans drawn to scale, showing the elevations of the area in question, the nature, location, and dimensions, of existing and/or proposed *structures*, earthen *fill* placement, storage of materials or equipment, and drainage facilities. No publicly-funded or sponsored project undertaken by any Federal, State, or local government, agency, or other governmental authority, including the construction of, improvement to, or modification of a public road, bridge, utility, *building*, parking area, or any other public *structure*, shall be exempt from the permitting requirements of this Ordinance, unless the responsible agency demonstrates that the project is expressly exempt from local permit compliance by Federal directive, in accordance with the provisions of Presidential Executive Order 11988 Floodplain Management (May 24, 1977). In the case of a public project that requires a Floodplain Development Permit and is subject to the National Environmental Policy Act (NEPA), a copy of the Categorical Exemption, Environmental Assessment or Environmental Impact

Statement, as the case may require, shall supplement the application for a Floodplain Development Permit.

- A. The Floodplain Administrator shall act expeditiously on all permit applications and shall complete the following review processes within the time specified:
1. Review for application completeness shall be completed within fourteen (14) days of an application and shall notify the applicant if the application is: (a) complete as submitted, or (b) requires additional information to complete the application. Furthermore, in notifying the applicant that additional information is required, the Floodplain Administrator shall identify all information necessary to properly complete said application.
  2. Once an application is completed, the Floodplain Administrator shall complete the review and final action on the application within thirty (30) days of submittal of a completed application. If the Floodplain Administrator fails to approve or disapprove a completed application within thirty (30) days of submittal, application will be deemed approved. Furthermore, should the Floodplain Administrator disapprove a completed application, the Floodplain Administrator shall provide all regulatory and engineering bases for disapproval.
  3. Any Community Acknowledgment authorization required by an application for a *Letter of Map Change* to FEMA shall be completed by the Floodplain Administrator and returned to the applicant for submission to FEMA within thirty (30) days.
- B. Where an engineering certification is submitted as part of an application, only the *Registered Professional Engineer* assigned to assist the Floodplain Administrator has the authority to overturn the findings of the certifying *Registered Professional Engineer*.
- C. Among other information that the Floodplain Administrator may reasonably require from the applicant to determine compliance with this Ordinance, the following information is specifically required:
1. Application Stage:
    - a. Elevation in relation to *Mean Sea Level* (or *Highest Adjacent Grade*) of the regulatory *Lowest Floor* level, including *basement*, of all proposed *structures*.
    - b. Complete *development* plans for *flood* hazard reduction, including a certification by a *Registered Professional Engineer* that the proposed *development* is designed for protection from *flooding* according to the minimum criteria of this Ordinance.

2. Construction Stage and Completion:
  - a. As-Built Plans and Elevation/Floodproofing Certificate(s) required. For all *New Construction* and *Substantial Improvements*, the permit holder shall provide to the Floodplain Administrator as-built certifications of compliance with this Ordinance, including the *Flood Protection Elevation* using the appropriate FEMA Elevation and/or Floodproofing Certificate:
    - i. Immediately after the *Lowest Floor* or floodproofing is completed. Where elevation is required, the FEMA Elevation and/or Floodproofing Certificate shall be supplemented by a certification by a *Registered Professional Engineer* or Architect that the as-built foundation design complies with all requirements of this Ordinance; and
    - ii. Upon completion of *New Construction* and *Substantial Improvements*, and prior to occupancy. Additionally, the permit holder shall provide to the Floodplain Administrator an as-built certification and supporting data by a *Registered Professional Engineer* or Architect that the *development* has been inspected and fully complies with all of the applicable *flood* hazard reduction standards of this Ordinance.
3. Expiration of Floodplain Development Permit:
  - a. Approved Floodplain Development Permits shall expire twelve (12) months from the date of approval.
  - b. The permit holder shall renew the approved Floodplain Development Permit for projects requiring more than twelve (12) months to complete construction activities.

### **SECTION 302. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

- A. Duties of the Floodplain Administrator shall include, but not be limited to:
  1. Review all Floodplain Development Permits to determine whether proposed *building* sites will be reasonably safe from *flooding* and assure that the permit requirements of this Ordinance have been satisfied.
  2. Advise permittee that additional Federal or State permits may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the Floodplain Development Permit.
  3. When *Base Flood Elevation* data or *Floodway* data have not been provided in accordance with Article 2, Section 201, then the Floodplain Administrator

shall obtain, review and reasonably utilize any *Base Flood Elevation* and *Floodway* data available from a Federal, State, or other sources so as to administer the provisions of Article 4.

4. Verify and record the actual elevation in relation to *Mean Sea Level* (or *Highest Adjacent Grade*) to which any *New Construction* or *Substantially Improved structures* have been elevated.
5. When elevation is utilized for a *structure*, the Floodplain Administrator shall require certification of foundation design compliance from a *Registered Professional Engineer* or Architect.
6. Verify and record the actual elevation in relation to *Mean Sea Level* (or *Highest Adjacent Grade*) to which any *New Construction* or *Substantially Improved structures* have been floodproofed.
7. When floodproofing is utilized for a *structure*, the Floodplain Administrator shall obtain certification of floodproofing design compliance from a *Registered Professional Engineer* or Architect.
8. Determine when a *structure* is subject to the “*Substantial Damage*,” “*Repetitive Loss*” and “*Substantial Improvement*” provisions of this Ordinance.
9. Notify adjacent communities and the Alabama Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA), and the Alabama Department of Economic and Community Affairs/Office of Water Resources (OWR).
10. For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA and OWR to ensure accuracy of community *flood* maps through the *Letter of Map Revision* process. Assure *flood* carrying capacity of any altered or relocated watercourse is maintained.
11. Where interpretation is needed as to the exact location of boundaries of *Special Flood Hazard Areas*, the Floodplain Administrator shall make the necessary interpretation. Where there appears to be a conflict between a mapped boundary as shown on the *FIRM* and actual field conditions or best available topographic data, the Floodplain Administrator shall determine the boundary according to the more restrictive boundary interpretation. Any person contesting the location of the boundary determination of the Floodplain Administrator shall be given a reasonable opportunity to *appeal* the interpretation as provided in Section 502 of this Ordinance. Where best available topographic data indicates a property or any portion of a property should be excluded from the *FIRM flood* zone designation, a *Letter of Map*

*Amendment* may be filed with FEMA to remove such area from the *Special Flood Hazard Areas* regulated by this Ordinance.

12. Provide written notice to subject property owners of the existence of a *violation* of the provisions of this Ordinance and inform said owner of available means to *Remedy a Violation*.
13. Maintain all records pertaining to the provisions of this Ordinance in the office of the Floodplain Administrator; said records shall be open for public inspection.
14. Assure all Conditional Letters of Map Change and Letters of Map Change are filed with FEMA for applications that would result in changes to *Floodway* boundaries, *Base Flood Elevations*, *Special Flood Hazard Area* boundaries and provide a signature on behalf of \_\_\_\_\_ (*insert name of municipality*), as required, on all Community Acknowledgments of such applications.
15. Maintain the *Flood Insurance Study* database, incorporating all FEMA-issued Letters of Map Change.
16. Review and provide a Letter of Comment for all *appeals* to the \_\_\_\_\_ (*insert name of municipality*) *Flood Hazard Appeal Board*.
17. Consult with a qualified *Registered Professional Engineer* in the review of any application submissions requiring an engineering certification of hydrologic or hydraulic studies.

#### **ARTICLE 4. PROVISIONS FOR FLOOD HAZARD REDUCTION**

##### **SECTION 400. GENERAL STANDARDS**

- A. In all *Special Flood Hazard Areas* the following provisions apply:
  1. *New Construction* and *Substantial Improvements* of existing *structures* shall be anchored to prevent flotation, collapse or lateral movement of the *structure* and surrounding soils. A *Registered Professional Engineer* or Architect shall develop or review the structural design, specifications and plans for the foundation of the *building* and certify that the design and methods of construction are in accordance with accepted practices to withstand flotation, collapse, lateral movement, erosion and scour, undermining, and the effects of water and wind acting simultaneously on all *building* components during the *Base Flood*.

2. *New Construction and Substantial Improvements* of existing *structures* shall be constructed with materials and utility equipment resistant to *flood* damage to the required *Flood Protection Elevation*.
3. *New Construction and Substantial Improvements* of existing *structures* shall be constructed by methods and practices that minimize *flood* damage to the required *Flood Protection Elevation*.
4. *Elevated buildings* – All *New Construction and Substantial Improvements* shall be elevated at or above the *Flood Protection Elevation* and be resistant to *flood* damage to or above the *Flood Protection Elevation*, in accordance with the following criteria:
  - a. Where *flood* protection is provided by elevation on *fill*, the *building* shall be constructed on properly designed and compacted *fill* (ASTM D-698 or equivalent) that extends beyond the *building* walls before dropping below the *Flood Protection Elevation* and has appropriate protection from erosion and scour. A *Registered Professional Engineer* must approve the design of the *fill*.
  - b. Where elevated *buildings* include fully enclosed areas formed by foundation and other exterior walls below the *Flood Protection Elevation*, such areas shall be designed to preclude finished living space below the *Base Flood Elevation*. The *enclosure* shall be restricted to an unfinished and *flood*-resistant *enclosure* and shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area. The *enclosure* shall be designed to equalize hydrostatic *flood* forces on exterior walls by allowing for the automatic entry and exit of floodwaters. Designs for complying with this requirement must be certified by a *Registered Professional Engineer* and meet the following minimum criteria:
    - i. For crawl space foundations where the elevated finish floor is five (5) or less feet above the lowest grade of the *enclosure*, provide a minimum of two openings below the *Base Flood Elevation* having a total net area in each wall exposed to *flooding* of not less than one (1) square inch for every square foot of enclosed area.
    - ii. For foundations where the elevated finish floor is greater than five (5) feet above the lowest grade of the *enclosure*, provide openings in each wall having a total net area of not less than 50% of the total wall area subject to *flooding* below the *Base Flood Elevation*. Latticework may be used to meet the required wall openings.
    - iii. The bottom of all openings shall be no higher than one (1) foot above grade.

- iv. The grade inside the enclosed area shall be equal to or higher than the adjacent grade outside the *building* on at least one side of the *building*.
  - v. All *building* components at or below the *Flood Protection Elevation* shall be constructed of materials resistant to *flood* damage.
  - vi. All *building* utilities, including electrical, plumbing, heating, ventilation, air conditioning equipment and service facilities (including ductwork) shall be elevated at or above the *Flood Protection Elevation* or be constructed of *flood*-resistant materials to the required *Flood Protection Elevation*.
  - vii. Openings may be equipped with lattice, screens, louvers, valves or other coverings or *Flood Vent* devices provided they permit the automatic flow of floodwater in both directions. Windows, doors, and garage doors do not qualify as openings. If a garage floor is below the *Flood Protection Elevation*, the garage must also meet the opening requirements for *enclosures*.
  - viii. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
  - ix. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
5. All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of *flooding* to the *Flood Protection Elevation*.
  6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
  7. New and replacement sanitary sewage systems, including septic systems, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
  8. *Manufactured homes* shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State requirements for resisting wind forces.

9. Any *development*, use, or activity within the *Special Flood Hazard Area* and 500-year *floodplain* (shaded X zone shown on the *FIRM*) that may be hazardous to public health or water quality is prohibited. These prohibited *developments* and activities include: non-residential *structures* or facilities that produce, use, or store highly volatile, flammable, explosive, toxic and/or water-reactive materials; salvage yards, sanitary landfills, fuel pumps, cemetery lots or vaults, and similar uses deemed hazardous by the Floodplain Administrator. However, replacement of existing underground fuel storage tanks may be permitted, provided the tanks are designed by a *Registered Professional Engineer* to be anchored to resist the buoyancy effects of a rising water table and comply with all applicable safety code standards.
10. All new and *Substantially Improved critical facilities*, as defined by Article 6 of this Ordinance shall be elevated at or above the 500-year *flood* elevation or the *flood* of record, whichever is higher, or floodproofed in lieu of elevation, except as necessary for operation of wastewater treatment plants and facilities, and utility distribution and collection systems. The *critical facility* must be connected to a public road outside the 500-year *floodplain* by at least one access drive or road that is, to the maximum extent practicable, elevated no lower than six (6) inches below the 500-year *flood* elevation, except a lower elevation may be required for grade transitions and traffic visibility.
11. Outdoor storage of unsecured, floatable materials, such as dumpsters, storage bins, barrels, lumber, debris, and other materials which may float and cause damage to property during *flood* conditions is prohibited. All such materials must be elevated to the *Flood Protection Elevation* or be adequately secured to prevent floatation.
12. All off-street parking and loading areas constructed after the *Effective Date of this Ordinance* shall be elevated to the maximum extent practicable, as determined by the applicant's *Registered Professional Engineer*, based upon site conditions and proposed land use. Transitions in grade may be required to tie into existing streets, drives, and parking areas or for traffic safety and visibility purposes.
13. Any alteration, repair, reconstruction or improvement to a *development*, which is not compliant with the provisions of this Ordinance and determined not to be a *Substantial Improvement*, shall be undertaken only if the non-conformity is not furthered, extended or replaced. Any *Addition* to a non-conforming *structure*, regardless of the costs of such improvements, shall fully comply with the provisions of this Ordinance.
14. *Floodway Encroachments*.
  - a. *Encroachments* within the *Regulatory Floodway*, including earthen *fill*, *New Construction*, *Substantial Improvements* or other *development* are

permitted, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the *encroachment* shall not result in any increase in *flood* levels or *Floodway* widths during a *Base Flood* discharge. A *Registered Professional Engineer* must provide a no-rise certification with applicable supporting technical data and analysis thereof. This restriction complies with the Federal requirements of 44 CFR 60.3 (d) (3).

b. Notwithstanding any other provisions of this Ordinance, *encroachments* within the *Regulatory Floodway* that would result in an increase in *Base Flood Elevations* are permitted in accordance with 44 CFR 60.3 (d)(4), provided: (1) an application for a Conditional Letter of Map Revision (CLOMR) is first submitted to FEMA for a conditional *FIRM* and *Floodway* revision, (2) the application fulfills the requirements for such revisions as established under the provisions 44 CFR 65.12, and (3) the application is approved by FEMA.

c. *Encroachments* within the *Floodway Fringe* area are permitted.

15. A FEMA application for Conditional *Letter of Map Revision* (CLOMR) or Conditional *Letter of Map Revision Based on Fill* (CLOMR-F) shall be required prior to the issuance of a Floodplain Development Permit for any *development* which will result in the modification of the *Floodway*. After completion of all work within the *Special Flood Hazard Area* or the *Floodway*, a *Letter of Map Revision* (LOMR) or *Letter of Map Revision Based on Fill* (LOMR-F) shall be filed with FEMA with the Community Acknowledgement of the Floodplain Administrator. Where an applicant for a *Letter of Map Revision* is unable to obtain a Community Acknowledgement from the Floodplain Administrator, the applicant may still file the application with FEMA, provided written evidence is provided indicating the Floodplain Administrator has been requested to sign a Community Acknowledgement, as provided by 44 CFR 65.4(b).

16. When unable to fully comply with the above-listed requirements, *functionally dependent uses* and activities, such as marinas, boat launches, docks, piers, and the like, are permitted but subject to the *encroachment* provisions of Article 4 Section 400. A.14.

B. *Floodway*. Located within *Special Flood Hazard Areas* established in Article 2, Section 201, are areas designated as *Floodways*. A *Floodway* may be an extremely hazardous area due to velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of *encroachment* in order to allow for the discharge of the *Base Flood* without increased *flood* heights (refer to Section 400.A.13, for no-rise requirements). Therefore, the following provisions shall apply to *Floodways*:

1. Only those uses and activities listed below are permitted within the *Floodway* according to the additional use limitations of the established zoning district in which the land is located **(Note: No reference to zoning is necessary for communities without zoning)** and the *encroachment* provisions of Section 400. A.14. *buildings*, obstructive fences (such as chain link, wood stockade, solid walls and similar fences that could collect debris and obstruct the free flow of *flood* waters, but excluding multi-strand barbed wire fencing and the like), restrooms, vehicle parking, material and equipment storage (temporary or permanent), stockpiling or accumulation of debris, and any other *development*, which could impede the discharge of *flood* waters or increase *flood* damages, are expressly prohibited.
  - a. Agricultural uses, such as general farming, pasture, grazing, horticulture (including plant nurseries, except for storage of potted plants and trees), forestry, and the like, provided agricultural accessory *structures* meet the *encroachment* provisions of Article 4 Section 400 A.14.
  - b. Public *flood* control *structures* and other public works relating to the control or monitoring of drainage, *Flooding*, erosion, water quality, or fish and wildlife habitats.
  - c. Permitted storm sewer and drainage ditch outfalls.
  - d. Wastewater treatment facilities owned or operated by a public or private utility, subject to the *encroachment* provisions of Section 400.A.14.
  - e. Water intake *structures* and related facilities owned or operated by a public or private utility, subject to the *encroachment* provisions of Section 400.A.14.
  - f. Open space and recreational facilities, including parks, camps, picnic grounds, golf courses, swimming areas, horseback trails, bike paths, pedestrian trails, nature paths, wildlife preserves, hunting and fishing areas, and the like, provided recreational *structures* meet the *encroachment* provisions of Article 4 Section 400.A.14.
  - g. Public and private roads, bridges, and access drives, subject to the *encroachment* provisions of Section 400.A.14.
  - h. Public and private utility lines for distribution of potable water, natural gas, methane gas, electric, communications systems, and other services, subject to the *encroachment* provisions of Section 400.A.14.
  - i. Functionally-dependent uses and activities, such as marinas, boat launches, docks, piers, privately owned water intake *structures* and related facilities, privately owned wastewater treatment facilities, and the like, subject to the *encroachment* provisions of Section 400.A.14.

- j. Yard areas, play areas, gardens, and similar open space areas including accessory *structures*, subject to the *encroachment* provisions of Section 400.A.14.
2. If Section 400.B.1, above, is satisfied, then any *New Construction* or *Substantial Improvement* shall also comply with all other applicable *flood hazard reduction* provisions of Article 4.

## SECTION 401. SPECIFIC STANDARDS

In all *Special Flood Hazard Areas* designated as AE, AH, AO, or A (with estimated *BF E*) zones on the *FIRM*, the following provisions are required:

- A. *New Construction* and *Substantial Improvements*. Where *Base Flood Elevation* data are available, *New Construction* or *Substantial Improvement* of any non-residential or *residential structure* shall have the *Lowest Floor*, including *basement*, elevated at or above the *Flood Protection Elevation*. The *Flood Protection Elevation* for *New Construction* and *Substantial Improvements* to *buildings* constructed on or after the *Effective Date of this Ordinance* shall be no lower than two (2) feet above the *Base Flood Elevation*, and the *Flood Protection Elevation* for *Substantial Improvements* for *buildings* constructed before the *Effective Date of this Ordinance* shall be one (1) foot above the *Base Flood Elevation*. *Building* elevation designs shall conform with the requirements of Sec. 400 A.4. "Elevated Buildings." *New installations* and *Substantial Improvements* of *Manufactured Homes* and *Recreational Vehicles* shall be subject to the requirements of Section C.3. below.
- B. *Non-Residential Construction - Substantial improvement* of any non-residential *structure* lawfully constructed prior to the *Effective Date of this Ordinance* may be floodproofed in lieu of elevation. The *structure*, together with applicant's attendant project utility and sanitary facilities, including mechanical and utility equipment, must be designed to be water tight to one (1) foot above the *Base Flood Elevation* (the *Flood Protection Elevation*), with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. Where manual intervention is required, an emergency response plan that describes actions to be taken in the event of a *flood* warning or watch shall be prepared and clearly posted throughout the *building*. Such plan shall be submitted to the Floodplain Administrator for approval. A *Registered Professional Engineer* or *Architect* shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the floodproofing provisions. Floodproofing of *New Construction* of non-residential *structures* is expressly prohibited.

- C. Standards for *Manufactured Homes* and *Recreational Vehicles*. Where *Base Flood Elevation* data are available:
1. All new, replacement, and *Substantially Improved Manufactured Homes* placed: (a) on individual lots or parcels, (b) in new or *Substantially Improved Manufactured Home Parks* or *Subdivisions*, (c) in an existing *Manufactured Home Park* or *Subdivision*, (d) in expansions to existing *Manufactured Home Parks* or *Subdivisions*, or (e) on a site in an existing *Manufactured Home Park* or *Subdivision* where a *Manufactured Home* has incurred "*Substantial Damage*" as the result of a *flood*, must have the *Lowest Floor* (measured by the lowest horizontal structural member) including *basement* elevated to a minimum of forty-eight (48) inches above grade or three(3) feet above the *Base Flood Elevation*, whichever results in the greater elevation.
  2. All *Manufactured Homes* must be elevated so that the *Manufactured Home* chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) to the elevation required by Sec. 401 C.1. above.
  3. All *Manufactured Homes* must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. A *Registered Professional Engineer* shall certify the design of the foundation system. (Refer to Sec. 400 A.1. above).
  4. All *Recreational Vehicles* placed on sites must either:
    - a. Be on the site for fewer than 180 consecutive days, fully licensed and ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached *structures* or *Additions*; or
    - b. The *Recreational Vehicle* must meet all the requirements for *New Construction*, including the anchoring and elevation requirements of Sec. 401 C.1. through C.3. above.

**SECTION 402. BUILDING STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS AND/OR FLOODWAY (A-ZONES)**

The following provisions apply to areas located within the *Special Flood Hazard Areas* established in Article 2, Section 201, where streams exist but no *Base Flood* data have been provided (A-Zones), or where *Base Flood* data have been provided but a *Floodway* has not been delineated:

- A. When *Base Flood Elevation* data or *Floodway* data have not been provided in accordance with Article 2, Section 201, then the Floodplain Administrator shall

- obtain, review, and reasonably utilize any scientific or historic *Base Flood Elevation* and *Floodway* data available from any Federal, State, or other source, in order to administer the provisions of Article 4. Additionally, a permit applicant may have prepared an engineering analysis to establish *Base Flood Elevation* and *Floodway* data. Only if data are not available from these sources, then the provisions in paragraphs B. and C. below in this Section 402 shall apply.
- B. In *Special Flood Hazard Areas* without *Base Flood Elevation* data and where a *Floodway* cannot be established by the Floodplain Administrator or engineering analysis, as provided in paragraph A. above, an area on each side of the stream equal to twenty-five (25) feet shall be measured from the top of each stream bank. This measured area shall be subject to the *Floodway* restrictions of Article 4 Section 400.B.
1. The area on each side of the stream subject to the *Floodway* restrictions shall be measured from the top of the steam bank under base flow conditions.
  2. In no event shall the area on each side of the stream subject to the above-listed *Floodway* restrictions be greater than the limits of the *Special Flood Hazard Area*.
- C. In *Special Flood Hazard Areas* without *Base Flood Elevation* data and where *Base Flood Elevations* cannot be established by the Floodplain Administrator, as provided in paragraph A. above, the *Flood Protection Elevation* shall be three (3) feet above the *Highest Adjacent Grade* at the *building* site.
- D. The applicant shall provide to the Floodplain Administrator certification from a registered land surveyor of the *Highest Adjacent Grade* at the *building* site and the *Lowest Floor* elevation level. The certification shall become a permanent part of the permit file.
1. Where required, elevation of the *Lowest Floor* shall be provided in accordance with the standards of Article 4, Section 400 A.4.
  2. Where allowed, floodproofing of the *Lowest Floor* shall be provided in accordance with Article 4, Section 401.B.

### **SECTION 403. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONES)**

*Special Flood Hazard Areas* established in Article 2, Section 201, may include designated “AO” shallow *flooding* areas. These areas have *Base Flood* depths of one (1) to three (3) feet above ground, with no clearly defined channel. The following provisions apply:

- A. All *New Construction* and *Substantial Improvements* of *residential* and non-residential *structures* shall have the *Lowest Floor*, including *basement*, elevated to the *flood* depth number specified on the *Flood Insurance Rate Map (FIRM)* above the *Highest Adjacent Grade*. If no *flood* depth number is specified, the *Lowest Floor*, including *basement*, shall be elevated at least three (3) feet above the *Highest Adjacent Grade*. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of Article 4, Section 400 A.4. "Elevated *buildings*." In lieu of elevation, *Substantial Improvements* and *Additions* to existing non-residential *buildings* may be floodproofed to the *Flood Protection Elevation* in accordance with the standards of Article 4, Section 401 B.

The Floodplain Administrator shall certify the *Lowest Floor* elevation level, and the record shall become a permanent part of the permit file.

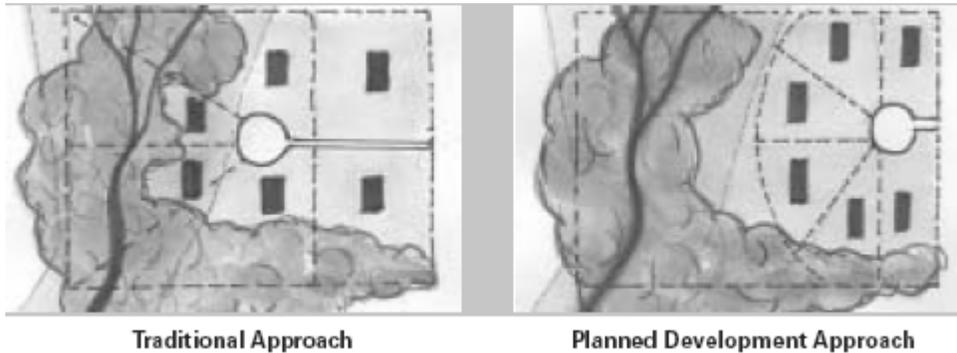
- B. Drainage paths shall be provided to guide floodwater around and away from any proposed *structure*.

#### **SECTION 404. STANDARDS FOR SUBDIVISIONS**

In the interest of public safety and so as to avoid property owners being subject to the Federally mandated purchase of *flood* insurance it is strongly encouraged that all *Special Flood Hazard Areas* within a *Subdivision* be set aside as a common open space for recreational, aesthetic and environmental uses. The creation of such common open spaces has been shown to have the additional benefit of increasing value to surrounding properties. Where such open space is set aside, ownership by a neighborhood association, land trust, or other responsible entity, and attendant maintenance obligations shall be addressed as part of the *Subdivision* proposal. All *Subdivision* proposals shall comply with the following minimum requirements:

- A. All *Subdivision* proposals shall be consistent with the need to minimize *flood* damage.
- B. All *Subdivision* proposals shall have *Public Utilities* and facilities such as sewer, gas, electrical and water systems located and constructed to minimize *flood* damage.
- C. All *Subdivision* proposals shall have adequate drainage provided to reduce exposure to *flood* hazards.
- D. Clustering of lots within a planned *residential Subdivision* to preserve open space is encouraged and may be credited toward open space required by other ordinances or regulations. For all *residential subdivisions* of six (6) or more lots, where any portion of a *Special Flood Hazard Area* has been set aside as permanent open space and dedicated to a public agency, land trust, homeowner association or other entity, lots within the area(s) remaining outside of the *Special*

*Flood Hazard Area* may be clustered. The minimum lot area for clustered lots may be reduced below the minimum zoning requirement, provided the overall density (measured by average lot area per unit) of the clustered lots does not exceed the density of the traditional without clustering and preservation of common open space. Clustering of lots shall otherwise be in accordance with the **(insert name of municipality)** Zoning Ordinance and Subdivision Regulations.



**Note: This clustering provision only applies to municipalities with zoning and subdivision regulations in place. Otherwise, the above paragraph should be deleted.**

- D. All streets, drives, and parking areas constructed within a *Subdivision* after the *Effective Date of this Ordinance* shall be elevated to the maximum extent practicable, as determined by the *Registered Professional Engineer*, based upon site conditions and proposed land use. Transitions in grade may be required to tie into existing streets, drives, and parking areas or for traffic safety and visibility purposes.
- E. Where *Base Flood* data is available (AE zones), the *Special Flood Hazard Area*, including all *FIRM* zones and *Floodway* boundaries, where applicable, *FIRM* panel reference, and *Base Flood Elevations* for each affected lot shall be clearly shown on all preliminary plats and final plats submitted for approval.
- F. Where *Base Flood Elevation* and *Floodway* data is not available (A zones), *Base Flood Elevation* and *Floodway* data shall be provided for *Subdivision* proposals and all other proposed *developments*, including *Manufactured Home Parks and Subdivisions*, greater than fifty (50) lots or five (5) acres, whichever is less. The *Base Flood Elevation* and *Floodway* data shall be certified by a *Registered Professional Engineer* and be developed using FEMA-approved models and methodologies. The regulatory *FIRM flood zone* and *Floodway* delineations, *Special Flood Hazard Areas*, *FIRM* panel reference, and *Base Flood Elevations* for each affected lot shall be clearly shown on all plans, preliminary plats and final plats submitted for approval. *Base Flood* data and *flood zone* delineations shall be submitted to FEMA through a *Letter of Map Revision*.

- H. *Base Flood Elevation* and *Floodway* data may be developed for Subdivisions and *developments* within an A zone of smaller size than that specified in paragraph G. above, in which case, the reporting requirements of paragraph G. above shall apply. Where no *Base Flood Elevation* and *Floodway* data is available for a proposed *development* or *Subdivision* in an A zone, the Floodplain Administrator shall estimate the *Base Flood Elevations* and *Floodway* delineations in accordance the provisions of Section 402, and such data shall be shown and marked as “estimated” on all plans and plats submitted for approval.

## ARTICLE 5. FLOOD HAZARD APPEAL BOARD

### SECTION 500. POWERS AND DUTIES OF THE APPEAL BOARD

The \_\_\_\_\_ (*name of appointed board*) as established by the \_\_\_\_\_ (*insert “City” or “Town”*) Council shall be known as the “*Flood Hazard Appeal Board*” and shall hear and decide requests for *appeals* or *variances* from the requirements of this Ordinance. The *Board* shall have the following powers and duties:

***Note: The Appeal Board may be a newly created Flood Hazard Appeal Board appointed by the Mayor or assigned to an existing city/town board, such as the Zoning Board of Adjustment. For a newly created Board, the number of members, qualifications, terms of each member, and the appointing authority, such as the Mayor/Council or both, should be described in the above paragraph. For municipalities without zoning, the Board could be comprised of three or more Council members.***

- A. ***Administrative review.*** The *Board* shall hear and decide *appeals* where it is alleged there is an error in any order, requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance. The *Board* shall also perform the following additional *administrative review* functions:
1. The *Board* shall hear and decide requests for the interpretation of the provisions of this Ordinance; or
  2. The *Board* shall hear and decide *appeals* of the Floodplain Administrator’s determination of the precise location of *Special Flood Hazard Area* or *Floodway* boundaries, *Base Flood Elevations*, or other interpretations of *FIRM* determinations, the *FIS*, or any other applicable *flood* study, data, or delineation.
- B. ***Variations.*** The *Board* shall issue *Variations* from the terms of this Ordinance for *floodplain* management purposes only, in accordance with the following criteria:

1. *Variances* may be issued for the repair or rehabilitation of *Historic Structures* upon a determination that the proposed repair or rehabilitation will not preclude the *structure's* continued designation as a *Historic Structure* and the *Variance* is the minimum necessary to preserve the historic character and design of the *structure*.
2. *Variances* may be issued for *development* necessary for the conduct of a *Functionally Dependent Use*, provided the criteria of this Article are met, no reasonable alternative exists, and the *development* is protected by methods that minimize *flood* damage during the *Base Flood* and creates no additional threats to public safety.
3. *Variances* to the *Floodway* encroachment restrictions of Sec. 400 A. 14 a. of this Ordinance shall not be issued within any designated *Floodway* if any increase in *flood* levels during the *Base Flood* discharge would result.
4. In reviewing such requests, the *Board* shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this Ordinance.
5. Conditions for *Variances*:
  - a. A *Variance* shall be issued only when there is:
    - i. A finding of good and sufficient cause;
    - ii. A determination that failure to grant the *Variance* would result in exceptional hardship; and
    - iii. A determination that the granting of a *Variance* will not result in increased *flood* heights beyond those allowed by this Ordinance, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - b. The granting of *Variances* by the *Board* should be generally limited to a lot size less than one-half (0.5) acre, however, deviations from this limitation may occur. As the lot size increases beyond one-half (0.5) acre, the technical justification required for issuing a *Variance* should increase. *Variances* may be issued for *New Construction* and *Substantial Improvements* to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with *existing structures* constructed below the *Base Flood Elevation*, in conformance with all other criteria of this Section.
6. The provisions of this Ordinance are minimum standards for *flood* loss reduction; therefore any deviation from the standards must be weighed

carefully. *Variations* shall only be issued upon a determination that the *Variance* is the minimum necessary, considering the *flood* hazard, to afford relief; and, in the instance of an *Historic Structure*, a determination that the *Variance* is the minimum necessary so as not to destroy the historic character and design of the *building*.

7. Any applicant to whom a *Variance* is granted to reduce the elevation of a *building* below the *Base Flood Elevation* shall be given written notice by the Floodplain Administrator specifying the difference between the *Base Flood Elevation* and the elevation of the proposed *Lowest Floor* and stating that the cost of *flood* insurance will be commensurate with the increased risk to life and property resulting from the reduced *Lowest Floor* elevation.
- C. In exercising the above mentioned powers, the *Board* may, in conformity with the provisions of the National Flood Insurance Act (CFR 44, Part 60.6), reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and, to that end shall have all the powers of the Floodplain Administrator from whom the *appeal* is taken.

#### **SECTION 501. BOARD MEETINGS, PROCEDURES**

- A. In all decisions rendered by the *Board*, a majority of members present at a quorum of members shall be required. No *Board* member shall act in a case in which they have personal interest.
- B. The *Board* shall establish rules and regulations for its own procedures not inconsistent with the provisions of this Ordinance. The *Board* shall meet at calls of the chairman, or in any event the *Board* shall meet within thirty (30) days after the filing of a Notice of *Appeal*.
- C. The Floodplain Administrator shall maintain the records of all *appeal* actions, including justification for their issuance, and report any *Variations* to the Federal and State Emergency Management Agencies upon request for an annual or biennial report.
- D. All hearings of the *Board* shall be open to the public.
  1. A notice of public hearing shall be given once a week for two (2) consecutive weeks in a newspaper published or widely distributed in the [redacted] (*insert "City" or "Town"*), said notice to be published the first time not less than fifteen (15) calendar days prior to the date fixed for said hearing.

***Note: In lieu of publication, a municipality may require posting of the notice in three or more public places, following its existing procedures for public notifications of ordinances and resolutions.***

2. Written notice of the public hearing shall be given to all owners of properties adjoining the affected site.
- E. The *Board* shall render a decision on an *appeal* within thirty (30) calendar days after hearing the petition, except a decision may be postponed where additional information is required by the *Board* pursuant to this Ordinance. A decision may be postponed no more than sixty (60) calendar days. The *Board* shall reconvene to consider the additional information and render a final decision.
- F. All decisions of the *Board* shall state the basis and conditions upon which the decision was made and the reason therefore.

#### **SECTION 502. FILING OF APPEALS**

- A. Within thirty (30) days after a decision is rendered by the Floodplain Administrator, a Notice of *Appeal* to the *Board* shall be filed with the office of the Floodplain Administrator on forms furnished by the community. A fee, as specified in the Schedule of Fees of this Ordinance, must accompany such Notice of *Appeal*.
- B. An *appeal* shall stay all proceedings in furtherance of the action appealed from, unless the Floodplain Administrator certifies to the *Board* after the Notice of *Appeal* has been filed that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the *Board* or by a court of record on application or notice to the Floodplain Administrator and on due cause shown.
- C. At the time of filing a Notice of *Appeal* to the *Board*, the applicant shall also submit any information that may be required by the *Board* as deemed necessary to render a decision.

#### **SECTION 503. APPEAL OF DECISION OF THE BOARD**

Any person aggrieved by the decision of the *Board* may, within fifteen (15) calendar days thereafter, *appeal* such decision to the Circuit Court or Court of like jurisdiction, by filing with such Court a written Notice of *Appeal* specifying the judgment or decision from which the *appeal* is taken. In case of such *appeal*, such board shall cause a transcript of all the proceedings in the cause to be certified to the Court to which *appeal* is taken and the cause in such Court shall be tried de novo.

### **ARTICLE 6. 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.

**“Addition (to an existing Building)”** means any walled and roofed expansion to the perimeter of a *building* in which the *Addition* is connected by a common load-bearing wall or a firewall. Any *Addition* shall be considered a “*Substantial Improvement*,” as defined herein.

**“Administrative Review”** means a request for a review of alleged error in any order, requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.

**“Appeal”** means a request for review by the *Flood Hazard Appeal Board* and/or civil court as provided for in Article 5 of this Ordinance.

**“Area of Shallow Flooding”** means a designated AO or AH Zone on a community's *Flood Insurance Rate Map (FIRM)* with *Base Flood* depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of *flooding* is unpredictable and indeterminate, and where velocity flow may be evident. Such *flooding* is characterized by ponding or sheet flow.

**“Base Flood”** means the *flood* having a one percent chance of being equaled or exceeded in any given year.

**“Base Flood Elevation (BFE)”** means the elevation of the *Base Flood*.

**“Basement”** means that portion of a *building* having its floor subgrade (below ground level) on all sides.

**“Building”** means any *structure* built for support, shelter, or *enclosure* for any occupancy or storage.

**“Conditional Letter of Map Change”** means an administrative procedure whereby FEMA will review and comment on proposed changes affecting the *SFHA* prior to such changes taking place. The *Conditional Letter of Map Change* is issued by FEMA in the form of a *Conditional Letter of Map Revision (CLOMR)* or a *Conditional Letter of Map Revision Based on Fill (CLOMR-F)*. Upon completion of the changes affecting the *SFHA*, the applicant must submit as-built certifications to FEMA for issuance of a final *Letter of Map Change (LOMR or LOMR-F)*.

**“County”** means Jefferson County, Alabama.

**“Critical Facilities”** means any *building* that, if flooded would result in severe consequences to public health and safety. *Critical facilities* include, but are not limited to:

1. Hospitals, nursing homes, schools, day care facilities, prisons and jails, and institutional housing for the elderly, handicapped, and similar *buildings* likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a *flood*;
2. Police stations, fire stations, emergency vehicle and equipment storage facilities, emergency operations centers, community shelters, and other public facilities that are needed for *flood* response activities before, during, and after a *flood*.

**“Development”** means 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, and storage of equipment or materials. However, “*development*” does not include the laying of underground infrastructure, such as underground pipes and service lines, where the final grade is restored to the original grade.

**“Effective Date of this Ordinance”** means the effective enactment date of this Ordinance on \_\_\_\_\_ **(insert the Effective Date of this Ordinance)**.

**“Elevated Building”** means a non-basement *building* built to have the *Lowest Floor* elevated above the *Flood Protection Elevation* by means of *fill*, solid foundation perimeter walls, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the *building* during a *Base Flood* event.

**“Enclosure”** means the area below the *Lowest Floor* formed by foundation and/or other exterior walls; commonly referred to as a “crawl space.”

**“Encroachment”** means any *New Construction*, *Substantial Improvements*, expansions, or enlargements of *buildings* or other *structures*; utilities; roads; bridges; infrastructure; mining; dredging; filling; grading; paving; *excavation*; drilling operations; storage of vehicles, equipment or other materials; or any other *development* within a regulatory *flood zone*.

**“Excavation”** means the removal of any material, to locations either on-site or off-site, which permanently lowers the ground levels of a site.

**“Existing Manufactured Home Park or Subdivision”** means any properly permitted *Manufactured Home Park* or *Subdivision* for which the construction of facilities for servicing the lots on which the *Manufactured Homes* are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before the *Effective Date of this Ordinance*.

**“Expansion to an Existing Manufactured Home Park or Subdivision”** means the preparation of additional sites by the construction of facilities for servicing the lots on

which the *Manufactured Homes* are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

**“Existing Structure”** means any properly permitted *structure* for which the “*Start of Construction*” commenced before the *Effective Date of this Ordinance* on \_\_\_\_\_ (*insert Effective Date of this Ordinance*) and excludes any subsequent improvements.

**“Expansion to An Existing Manufactured Home Park or Subdivision”** means the preparation of additional sites by the construction of facilities for servicing the lots on which the *Manufactured Homes* are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

**“Fill”** means the placement of any material, from sources either on-site or off-site, which permanently raises the ground levels of a site existing at the time of adoption of the *Flood Insurance Study* and any revisions thereto.

**“Flood” or “Flooding”** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

**“Flood Hazard Appeal Board (Board)”** means the appointed board established to hear and decide requests for *appeals* or *variances* from the requirements of this Ordinance.

**“Flood Insurance Rate Map (FIRM)”** means an official map of a community, issued by the Federal Insurance Administration, delineating the *Special Flood Hazard Areas* and/or risk premium zones applicable to the community.

**“Flood Insurance Study” (FIS)** is the official report by the Federal Insurance Administration evaluating *flood* hazards and containing *flood* profiles and water surface elevations of the *Base Flood*.

**“Flood Protection Elevation (FPE)”** means the elevation to which *buildings* and uses regulated by this Ordinance are required to be elevated or floodproofed. The *Flood Protection Elevation* for *New Construction* is two (2) feet above the *Base Flood Elevation*, and the *Flood Protection Elevation* for *Substantial Improvements* of and *Additions to existing structures* is one (1) foot above the *Base Flood Elevation*.

**“Floodplain”** means any land area susceptible to *flooding*.

**“Flood Vent”** means an opening in a foundation wall which is designed to equalize hydrostatic *flood* forces on exterior walls by allowing for the automatic entry and exit of floodwaters.

**“Floodway (Regulatory Floodway)”** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the *Base Flood* without cumulatively increasing the water surface elevation more than a designated height.

**“Floodway Fringe”** means the portion of the *Special Flood Hazard Area* outside the *Floodway*. The area between the *Floodway* and the boundary of the 100-year *flood* is termed the *Floodway Fringe*. The *Floodway Fringe* thus encompasses the portion of the *floodplain* that could be completely obstructed without increasing the water surface elevation of the 100-year *flood* more than one (1.0) foot at any point. The *Floodway* and *Floodway Fringe* boundaries have been determined by a *Flood Insurance Study* and are shown on the *Flood Insurance Rate Maps (FIRMs)*. Boundaries for streams without established *Base Flood Elevations* and/or *Floodways (A-zones)* shall be determined in accordance with Section 402.

**“Functionally Dependent Facility (or Use)”** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

**“Highest Adjacent Grade”** means the highest natural elevation of the ground surface, prior to construction, adjacent to the exterior walls of a *structure*.

**“Historic Structure”** means any *structure* that is;

1. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

- a. By an approved state program as determined by the Secretary of the Interior; or
- b. Directly by the Secretary of the Interior in states without approved programs.

**“Letter of Map Amendment (LOMA)”** means an administrative procedure whereby FEMA will review information submitted by a property owner who believes their property has been inadvertently included in a *Special Flood Hazard Area*. For a *LOMA* to be issued to remove the *structure* from the *SFHA*, NFIP regulations require that the *Lowest Adjacent Grade* (the lowest ground touching the *structure*) be at or above the *Base Flood Elevation (BFE)*. To remove the entire lot, the lowest point on the lot must be at or above the *BFE*.

**“Letter of Map Change (LOMC)”** means any one of the available administrative procedures (*LOMA*, *LOMR*, *LOMR-F*) whereby FEMA officially changes the *SFHA* status of a property.

**“Letter of Map Revision (LOMR)”** means an administrative procedure whereby FEMA issues an annotated copy of the *FIRM* which officially changes the *floodplain* boundaries along certain waterways in the community. A *LOMR* may be based solely on more accurate and detailed scientific or technical information, or on actual physical changes to the *floodplain* that affect *flooding* conditions. Applications for a *LOMR* by a private individual must be signed by the local Floodplain Administrator on the Community Acknowledgement Form, prior to submission to FEMA. Where an applicant for a *Letter of Map Revision* is unable to obtain a Community Acknowledgement from the Floodplain Administrator, the applicant may still file the application with FEMA, provided written evidence is provided indicating the Floodplain Administrator has been requested to sign a Community Acknowledgement, as provided by 44 CFR 65.4(b).

**“Letter of Map Revision Based on Fill (LOMR-F)”** means an administrative procedure whereby FEMA will review information submitted by a property owner who has elevated their property above the *BFE* through the placement of *fill* material. NFIP regulations require that the *Lowest Adjacent Grade* of the *structure* be at or above the *BFE* for a *LOMR-F* to be issued to remove the *structure* from the *SFHA*. The participating community must also determine that the land and any existing or proposed *structures* to be removed from the *SFHA* are "reasonably safe from *flooding*." To remove the entire lot and *structure*, both the lowest point on the lot and the *Lowest Adjacent Grade* of the *structure* must be at or above the *BFE*.

**“Lowest Adjacent Grade”** means the lowest natural elevation of the ground surface, prior to construction, adjacent to the exterior walls of a *structure*.

**“Lowest Floor”** means the *Lowest Floor* of the lowest enclosed area, including *basement*, measured at the top of the *Lowest Floor*. An unfinished or *flood* resistant *enclosure*, usable solely for parking of vehicles, *building* access, or storage, in an area

other than a *basement*, is not considered a *building's Lowest Floor*, provided that such *enclosure* is not built so as to render the *structure* in violation of other provisions of this Ordinance. The top of the *Lowest Floor* shall be measured according to the appropriate *building* diagram in the FEMA Elevation Certificate.

**“Manufactured Home”** means a *building*, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable *structures* placed on a site for 180 consecutive days or longer and intended to be improved property.

**“Mean Sea Level”** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the *floodplain*.

**“New Construction”** means any *structure*, or *Addition* thereto, for which the “*Start of Construction*” commenced on or after the *Effective Date of this Ordinance* on (insert the Effective Date of this Ordinance).

**“New Manufactured Home Park or Subdivision”** means a *Manufactured Home Park* or *Subdivision* for which the “*Start of Construction*” of facilities for servicing the lots on which the *Manufactured Homes* are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) commenced after the *Effective Date of this Ordinance*.

**“Public Utilities”** shall mean any person, firm, corporation, municipal department, board, or commission fully authorized to furnish, under governmental regulations, electricity, natural gas, methane gas, steam, communications, telegraph, transportation, water services, sewage disposal, cable and telephone transmission and other services.

**“Recreational Vehicle”** means a vehicle, which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**“Registered Professional Engineer or PE”** means a person licensed to practice professional engineering in the State of Alabama in the fields of civil or environmental engineering with experience in hydrology, who by reason of special knowledge of mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and/or practical experience, is qualified to practice engineering according to the provisions of the Code of Alabama

(1975), §§ 34-11-1, as amended, and is presently registered by the Alabama Board of Licensure for Professional Engineers and Land Surveyors.

**“Remedy a Violation”** means to bring the *structure* or other *development* into compliance with State or local *floodplain* management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the *structure* or other affected *development* from *flood* damages, implementing the enforcement provisions of this Ordinance or otherwise deterring future similar *violations*, or reducing Federal financial exposure with regard to the *structure* or other *development*.

**“Repetitive Loss”** means *flood*-related damages sustained by a *structure* on two separate occasions during a 10-year period for which the cost of repairs at the time of each such *flood* event, on the average, equals or exceeds 25 percent of the market value of the *structure* before the damages occurred. A *structure* with *Repetitive Loss* shall be deemed to have incurred “*Substantial Damage*,” as defined herein.

**“Residential”** means any lot, plot, parcel, tract, area or piece of land or any *building* to be used, or intended to be used, primarily for dwelling purposes; includes owner-occupied, rental, single-family and multi-family uses.

**“Special Flood Hazard Area (SFHA)”** is the land in the *floodplain* within a community subject to a one percent or greater chance of *flooding* in any given year (the *Base Flood*). The area is used for actuarial purposes in the underwriting of *flood* insurance policies. The area may be designated a Zone A, AE, AH, or AO on the *Flood Insurance Rate Map*. In the absence of official designation by the Federal Emergency Management Agency, *Special Flood Hazard Areas* shall be those designated by the local community as provided for in Section 201.

**“Start of Construction”** means the date the development permit was issued, provided the actual *Start of Construction*, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the *structure* such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of *excavation*, and includes the placement of a *Manufactured Home* on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include *excavation* for a *basement*, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of *buildings* appurtenant to the permitted *structure*, such as garages or sheds not occupied as dwelling units or part of the main *structure*. (NOTE: accessory *structures* are not exempt from any Ordinance requirements). For a *Substantial Improvement*, the actual *Start of Construction* means the first alteration of any wall, ceiling, floor, or other structural part of a *building*, whether or not that alteration affects the external dimensions of the *building*.

**“Structure”** means a walled and roofed *building* that is principally above ground, a *Manufactured Home*, a gas or liquid storage tank, and other man-made facilities or infrastructures.

**“Subdivision”** means the division and re-division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, tracts, or other divisions of land.

**“Substantial Damage”** means damage of any origin sustained by a *structure* whereby the cost of restoring the *structure* to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the *structure* before the damage occurred. *Substantial Damage* also means a “*Repetitive Loss*,” as defined herein.

**“Substantial Improvement (Substantially Improved)”** means any combination of repairs, reconstruction, rehabilitation, *Addition*, or other improvement of a *structure*, taking place during a ten year period, the cumulative cost of which equals or exceeds fifty-percent (50%) of the market value of the *structure* before the “*Start of Construction*” of the improvement. The market value of the *building* should be (1) the appraised value of the *structure* prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the *structure* prior to the damage occurring. The most recent improvement valuations of the *County Tax Assessor* determine the market or appraised value, or in the absence of a Tax Assessor valuation, a market appraisal by an Alabama-licensed appraiser shall determine the appraised value of the *building*. This term includes *structures*, which have incurred “*Substantial Damage*” or “*Repetitive Loss*,” regardless of the actual amount of repair work performed. For the purposes of this definition, “*Substantial Improvement*” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the *building* commences, whether or not that alteration affects the external dimensions of the *building*. The term does not, however, include either: (1) any project for improvement of a *structure* to correct existing *violations* of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or; (2) any alteration of a *Historic Structure*, provided that the alteration will not preclude the *structure’s* continued designation as a *Historic Structure*.

**“Substantially Improved Existing Manufactured Home Parks or Subdivisions”** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 25 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**“Variance”** is a grant of relief from the requirements of this Ordinance, which permits a use or construction in a manner otherwise prohibited by this Ordinance.

**“Violation”** means the failure of a *structure* or other *development* to be fully compliant with this Ordinance. A *structure* or other *development* without the Elevation Certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 and

corresponding parts of this Ordinance is presumed to be in *violation* until such time as that documentation is provided.

**ARTICLE 7.  
SEVERABILITY**

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**ARTICLE 8.  
SCHEDULE OF FEES**

Required fees shall be determined by the Floodplain Administrator, in accordance with the following schedule, and apply to action under this Ordinance. All funds collected under the provisions of this Ordinance shall be paid to the                      (*insert name of municipality*).

- A. Floodplain Development Permit Application fees.
1. *New construction, substantial improvements, or additions, other than single family residential buildings, and accessory buildings or structures:*
    - a. *Buildings with 30,000 or more square feet of floor area - \$500 per building*
    - b. *Buildings with 5,000 to less than 30,000 square feet of floor area - \$250 per building*
    - c. *Buildings with less than 5,000 square feet of finish floor area - \$100 per building*
  2. *Subdivision proposals - \$100 per subdivision plat.*
  3. *Single family residential new construction, substantial improvements, or additions, other than accessory buildings or structures - \$50 per building*
  4. *Accessory buildings or structures that are not subject to elevation or floodproofing requirements, such as, outbuildings, storage units, decks, carports, garages, dumpsters, and fences – \$25 per building or structure*
  5. *Less than substantial improvements to an existing building - \$25 per building*
  6. *All other developments, not classified above - \$100 per development*

B. *Registered Professional Engineer* review fees, as applicable to the proposed development:

- 1. No-rise certification - \$100 plus \$500 for supporting hydrologic/hydraulic studies, if required
- 2. Foundation design certification - \$50 per building
- 3. Floodproofing plan certification and Floodproofing Certificate - \$50 per building
- 4. Elevation plan certification and Elevation Certificate - \$25 per building
- 5. On-site inspection for compliance - \$100 per inspection
- 6. As-built plans and certification - \$100

C. Letter of Map Change

Community Acknowledgment - \$100

D. *Flood Insurance Rate Map (FIRM)* Determination

Written determination - \$25

E. *Appeal to the Flood Hazard Appeal Board*

Application for a *Variance* or *Administrative Review* - \$100

**Note: The schedule of fees may vary among municipalities. Where a municipality has a city or town engineer under a professional services contract to assist the Floodplain Administrator, the fees should be sufficient to cover the costs to the city or town. Further, fees should be updated every two to three years to keep up with rising costs for professional services. For municipalities with capable in-house staff, the fees could be reduced or eliminated. For review of hydrology/hydraulic studies, the FEMA Regional Office in Atlanta may provide free technical assistance to a community.**

**ARTICLE 9  
EFFECTIVE DATE**

This Ordinance shall become effective upon its due adoption and publication as provided by law.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BY:**

**ATTEST:**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*(Name and Title)*

\_\_\_\_\_  
*(Name and Title)*